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SECTION 273. ADOPTIVE FORFEITURE MATTERS - DRUGS

273-1 ADOPTIVE FORFEITURE MATTERS - DRUGS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION

NUMBER/ALPHA

DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
274B	ADOPTIVE FORFEITURE MATTER -	OC/DP-OC/DP

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- OC - APPRAISED VALUE \$5,000
- \$24,999
- 274C ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE UNDER
\$5,000
- 275A ADOPTIVE FORFEITURE MATTER - WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC
APPRAISED VALUE \$25,000+ CRIME (EC)
- 275B ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE \$5,000
- \$24,999
- 275C ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE UNDER
\$5,000
- 276A ADOPTIVE FORFEITURE MATTER - VCMO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VCMO) - APPRAISED THEFT (IT)
VALUE \$25,000+
- 276B ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE \$5,000
- \$24,999
- 276C ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE
UNDER \$5,000
- 277A ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT)
- 277B ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000
- \$24,999
- 277C ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF
PROGRAM

EFFECTIVE: 11/13/96

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SECTION 274. ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

274-1 ADOPTIVE FORFEITURE MATTERS - ORGANIZED CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentages is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION
NUMBER/ALPHA
DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP

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|------|---|-----------------------------------|
| 274B | ADOPTIVE FORFEITURE MATTER -
OC - APPRAISED VALUE \$5,000
- \$24,999 | OC/DP-OC/DP |
| 274C | ADOPTIVE FORFEITURE MATTER -
OC - APPRAISED VALUE UNDER
\$5,000 | OC/DP-OC/DP |
| 275A | ADOPTIVE FORFEITURE MATTER -
WHITE COLLAR CRIME (WCC) -
APPRAISED VALUE \$25,000+ | WCC/
ECONOMIC
CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER -
WCC - APPRAISED VALUE \$5,000
- \$24,999 | WCC/EC |
| 275C | ADOPTIVE FORFEITURE MATTER -
WCC - APPRAISED VALUE UNDER
\$5,000 | WCC/EC |
| 276A | ADOPTIVE FORFEITURE MATTER -
VIOLENT CRIMES AND MAJOR
OFFENDERS (VCMO) - APPRAISED
VALUE \$25,000+ | VCMO/
INTERSTATE
THEFT (IT) |
| 276B | ADOPTIVE FORFEITURE MATTER -
VCMO - APPRAISED VALUE \$5,000
- \$24,999 | VCMO/IT |
| 276C | ADOPTIVE FORFEITURE MATTER -
VCMO - APPRAISED VALUE UNDER
\$5,000 | VCMO/IT |
| 277A | ADOPTIVE FORFEITURE MATTER -
COUNTERTERRORISM (CT) -
APPRAISED VALUE \$25,000+ | CT/DOMESTIC
TERRORISM
(DT) |
| 277B | ADOPTIVE FORFEITURE MATTER -
CT - APPRAISED VALUE \$5,000 -
\$24,999 | CT/DT |
| 277C | ADOPTIVE FORFEITURE MATTER -
CT - APPRAISED VALUE UNDER
\$5,000 | CT/DT |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF PROGRAM

EFFECTIVE: 11/28/95

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SECTION 275. ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

275-1 ADOPTIVE FORFEITURE MATTERS - WHITE COLLAR CRIME

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

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(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION
NUMBER/ALPHA
DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/
SUBPROGRAM

273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) - APPRAISED VALUE \$25,000+	OC/DP-OC/DP

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|------|---|
| 274B | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE \$5,000
- \$24,999 |
| 274C | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE UNDER
\$5,000 |
| 275A | ADOPTIVE FORFEITURE MATTER - WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC
APPRAISED VALUE \$25,000+ CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE \$5,000
- \$24,999 |
| 275C | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE UNDER
\$5,000 |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VCMO) - APPRAISED THEFT (IT)
VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE \$5,000
- \$24,999 |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE UNDER
\$5,000 |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT) |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000 -
\$24,999 |
| 277C | ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000 |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF
PROGRAM

EFFECTIVE: 11/28/95

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SECTION 276. ADOPTIVE FORFEITURE MATTERS -
VIOLENT CRIMES AND MAJOR OFFENDERS

276-1 ADOPTIVE FORFEITURE MATTERS - VIOLENT CRIMES AND MAJOR
OFFENDERS

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

(b) At the same time the local agency refers the matter to the FBI, it will submit a request for an equitable share of the property based on a percentage of its participation in the investigation. Since the local agency did the entire investigation, all of the property is usually shared, less expenses to sell the property and administrative costs to federal agencies associated with processing the forfeiture request. The percentages that are withheld by federal agencies for processing AFMs are governed by the Attorney General Guidelines on Seized and Forfeited Property and amended in "A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies." In adoptive seizures that are forfeited, the determining official will allocate 80 percent to the local agency and 20 percent to the Department of Justice Assets Forfeiture Fund of the total net proceeds realized through the disposition of the forfeited property.

(c) The 20 percent that is withheld represents the federal equitable share based upon the United States government's effort in forfeiting the property. This sharing percentage is applicable to property seized on or after March 1, 1994.

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(d) The intent of adoptive seizures and equitable sharing is to promote cooperative law enforcement.

(e) Classifications 273 through 277 were established to provide a mechanism for tracking work hours spent on AFMs regardless of the substantive classification (i.e., Copyright Matters, which is classification 28; Illegal Gambling Business, which is classification 182) covering the violation under which items were seized. Having a method of monitoring the resources necessary to support the adoptive forfeiture program should also assist in obtaining additional Funded Work Years for the FBI.

(2) ALPHA DESIGNATORS

Whenever a matter is referred to the FBI by state or local authorities requesting federal forfeiture, an adoptive forfeiture case is to be opened under the appropriate below-listed classifications. The classification is to be determined by what federal violation will be used in requesting federal forfeiture. As an example, a gambling seizure referred to the FBI as a forfeiture under federal gambling laws would be opened as an AFM-Organized Crime. After the AFM is opened for investigation, in most instances, the forfeiture matter will be assigned to the Paralegal Specialist who will give the identified property an FBI seizure number.

Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION NUMBER/ALPHA DESIGNATOR	CLASSIFICATION TITLE	PROGRAM/ SUBPROGRAM
273A	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$25,000+	OC/DP-OC/DP
273B	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE \$5,000 - \$24,999	OC/DP-OC/DP
273C	ADOPTIVE FORFEITURE MATTER - DRUG - APPRAISED VALUE UNDER \$5,000	OC/DP-OC/DP
274A	ADOPTIVE FORFEITURE MATTER - ORGANIZED CRIME (OC) -	OC/DP-OC/DP

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APPRAISED VALUE \$25,000+

- | | |
|------|---|
| 274B | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE \$5,000
- \$24,999 |
| 274C | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE UNDER
\$5,000 |
| 275A | ADOPTIVE FORFEITURE MATTER - WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC
APPRAISED VALUE \$25,000+ CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE \$5,000
- \$24,999 |
| 275C | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE UNDER
\$5,000 |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VCMO) - APPRAISED THEFT (IT)
VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE \$5,000
- \$24,999 |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE UNDER
\$5,000 |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT) |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000 -
\$24,999 |
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CT - APPRAISED VALUE UNDER
\$5,000 |

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(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF
PROGRAM

EFFECTIVE: 11/28/95

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SECTION 277. ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

277-1 ADOPTIVE FORFEITURE MATTERS - COUNTERTERRORISM

(1) BACKGROUND AND PURPOSE

(a) The FBI's Forfeiture Program usually involves either seizures of property made by FBI Agents in their substantive investigations or seizures made exclusively by state and local agencies and referred to the FBI. These latter-type seizures are to be referred to as Adoptive Forfeiture Matters (AFMs). A typical AFM would emanate from a state or local law enforcement agency seizing property as a result of their investigation and contacting the FBI to process the seizure for federal forfeiture. The accompanying criminal prosecution would remain with the local authorities; however, the seized property would be referred to the FBI for forfeiture pursuant to one of the federal forfeiture provisions under the jurisdiction of the FBI. Seized property accepted in this manner has the same effect as if the property had originally been seized by the FBI.

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Set forth below are the classifications and alpha designators to be used within each of the classifications.

CLASSIFICATION
NUMBER/ALPHA
DESIGNATOR

CLASSIFICATION TITLE

PROGRAM/
SUBPROGRAM

273A

ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
DRUG - APPRAISED VALUE
\$25,000+

273B

ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
DRUG - APPRAISED VALUE
\$5,000 - \$24,999

273C

ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
DRUG - APPRAISED VALUE UNDER
\$5,000

274A

ADOPTIVE FORFEITURE MATTER - |OC/DP-OC/DP|
ORGANIZED CRIME (OC) -
APPRAISED VALUE \$25,000+

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| 274B | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE \$5,000
- \$24,999 |
| 274C | ADOPTIVE FORFEITURE MATTER - OC/DP-OC/DP
OC - APPRAISED VALUE UNDER
\$5,000 |
| 275A | ADOPTIVE FORFEITURE MATTER - WCC/
WHITE COLLAR CRIME (WCC) - ECONOMIC
APPRAISED VALUE \$25,000+ CRIME (EC) |
| 275B | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE \$5,000
- \$24,999 |
| 275C | ADOPTIVE FORFEITURE MATTER - WCC/EC
WCC - APPRAISED VALUE UNDER
\$5,000 |
| 276A | ADOPTIVE FORFEITURE MATTER - VCMO/
VIOLENT CRIMES AND MAJOR INTERSTATE
OFFENDERS (VCMO) - APPRAISED THEFT (IT)
VALUE \$25,000+ |
| 276B | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE \$5,000
- \$24,999 |
| 276C | ADOPTIVE FORFEITURE MATTER - VCMO/IT
VCMO - APPRAISED VALUE UNDER
\$5,000 |
| 277A | ADOPTIVE FORFEITURE MATTER - CT/DOMESTIC
COUNTERTERRORISM (CT) - TERRORISM
APPRAISED VALUE \$25,000+ (DT) |
| 277B | ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE \$5,000 -
\$24,999 |
| 277C | ADOPTIVE FORFEITURE MATTER - CT/DT
CT - APPRAISED VALUE UNDER
\$5,000 |

(3) INVESTIGATIVE OBJECTIVES AND PROCEDURES

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(a) The objective of these classifications is to direct and track investigative resources committed to seized property matters referred to the FBI for forfeiture from state and local agencies.

(b) The investigative procedures for AFMs shall be in accordance with established guidelines, rules and regulations set forth in the FBI's Forfeiture and Seized Property Manual and the Attorney General's Guidelines on Seized and Forfeited Property.

(4) CHARACTER - ADOPTIVE FORFEITURE MATTERS - NAME OF
PROGRAM

EFFECTIVE: 11/28/95

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SECTION 278. PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS

278-1 PRESIDENT'S INTELLIGENCE OVERSIGHT BOARD MATTERS POLICY

Information concerning the 278 classification is set forth
in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
MANUAL (NFIPM).

EFFECTIVE: 02/14/97

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SECTION 279. WEAPONS OF MASS DESTRUCTION

279-1 STATUTES

WEAPONS OF MASS DESTRUCTION

Title 18, USC, Sections 175-178; Title 18, USC, Sections 2332a and 2332c; Title 18, USC, Section 921; and Title 18, USC, Section 831.

EFFECTIVE: 06/18/97

279-2 JURISDICTION

The FBI shall investigate all alleged or suspected criminal violations of the Weapons of Mass Destruction (WMD) statute and the Biological Weapons Anti-Terrorism (BWAT) Act.

EFFECTIVE: 06/18/97

279-3 DEFINITIONS

(1) WEAPONS OF MASS DESTRUCTION DEFINITIONS:

(a) "Weapons of Mass Destruction" (Section 2332a, Title 18, USC)- means:

1. any destructive device as defined in Title 18, Section 921;

2. any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

Sec 279 Coordinated with R. Shapiro - NSD - 8-4-98

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3. any weapon involving a disease organism; or

4. any weapon that is designed to release radiation or radioactivity at a level dangerous to human life. Note: Violations involving nuclear and radiological WMDs will be investigated under Bureau classification 117, "The Atomic Energy Act."

(b) The term "destructive device" means any explosive, incendiary, or poison gas -

1. bomb,

2. grenade,

3. rocket having an explosive or incendiary charge of more than four ounces,

4. missile having an explosive or incendiary charge of more than one-quarter ounce,

5. mine, or

6. device similar to any of the devices described in the preceding clauses.

(c) "Chemical Weapon," as defined in Title 18, USC, Section 2332c, means any weapon that is designed or intended to cause widespread death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or precursors of toxic or poisonous chemicals.

(d) "Nuclear Material" means material containing any

1. plutonium with an isotopic concentration not in excess of 80 percent plutonium 238;

2. uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

3. uranium that contains the isotope 233 or 235 or both in such amounts that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

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4. uranium

Refer to the MIOG, Part I, Section 117 (Atomic Energy Act).

(2) BIOLOGICAL WEAPONS ANTI-TERRORISM ACT DEFINITIONS

(a) "Biological agent" (Title 18, USC, Sections 175-178) - means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, as capable of causing:

1. death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

2. deterioration of food, water, equipment, supplies, or material of any kind; or

3. deleterious alteration of the environment.

(b) "Toxin" - means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including -

1. any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

2. any poisonous isomer or biological product, homolog, or derivative of such a substance.

(c) "Delivery system" - means:

1. any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

2. any vector.

(d) "Vector" - means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

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(e) "For use as a weapon" - does not include the development, production, transfer, acquisition, retention or possession of any biological agent, toxin, or delivery system for prophylactic, protective or other peaceful purposes.

EFFECTIVE: 06/18/97

279-4 VIOLATIONS

(1) Title 18, USC, Section 2332a (Use of Weapons of Mass Destruction) includes the following:

"(1) Offense against a national of the United States or within the United States. - A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction, including any biological agent, toxin, or vector (as those terms are defined in section 178), --

- "(a) against a national of the United States while such national is outside of the United States;
- "(b) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of the threat, attempt or conspiracy, would have affected interstate or foreign commerce; or
- "(c) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States;

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life."

"(2) Offense by national of the United States outside of the United States. - Any national of the United States, who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years

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or for life."

(2) Title 18, USC, Section 2332c (Use of Chemical Weapons) includes the following:

"(1) A person shall be punished under paragraph (2) if that person, without lawful authority, uses, or attempts or conspires to use, a chemical weapon against--

"(A) a national of the United States while such national is outside of the United States;

"(B) any person within the United States; or

"(C) any property that is owned, leased, or used by the United States or any department or agency of the United States, whether the property is within or outside of the United States."

"(2) Penalties.--A person who violates paragraph (1)--

"(A) shall be imprisoned for any term of years or for life; or

"(B) if death results from that violation, shall be punished by death or imprisoned for any term of years or for life."

(3) Title 18, USC, Sections 175-178 (BWAT Act of 1989) includes the following:

(a) Section 175 (Prohibitions with respect to biological weapons):

"In General - Whoever knowingly develops, produces, stockpiles, transfers, acquires, retains, or possesses any biological agent, toxin, or delivery system for use as a weapon, or knowingly assists a foreign state or any organization to do so, or attempts, threatens, or conspires to do the same, shall be fined under this title or imprisoned for life or any term of years, or both. There is extraterritorial Federal jurisdiction over an offense under this section committed by or against a national of the United States."

(b) Section 176 (Seizure, forfeiture, and destruction):

"(a) In General - (1) Except as provided in paragraph (2), the Attorney General may request the issuance, in the same manner as provided for a search warrant, of a warrant authorizing the seizure of any biological agent, toxin, or delivery system that -

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- (A) exists by reason of conduct prohibited under Section 175 of this Title; or
- (B) is of a type or in a quantity that under the circumstances has no apparent justification for prophylactic, protective, or other peaceful purposes.
- (2) In exigent circumstances, seizure and destruction of any biological agent, toxin, or delivery system described in subparagraphs (A) and (B) of paragraph (1) may be made upon probable cause without the necessity for a warrant."
- "(b) Procedure - Property seized pursuant to subsection (a) shall be forfeited to the United States after notice to potential claimants and an opportunity for a hearing. At such hearing, the Government shall bear the burden of persuasion by a preponderance of the evidence. Except as inconsistent herewith, the same procedures and provisions of law relating to a forfeiture under the customs laws shall extend to a seizure and forfeiture under this section. The Attorney General may provide for the destruction or other appropriate disposition of any biological agent, toxin, or delivery system seized and forfeited pursuant to this section."

(c) Section 177 (Injunctions):

"In General - The United States may obtain in a civil action an injunction against -

- "(1) the conduct prohibited under Section 175 of this Title;
- "(2) the preparation, solicitation, attempt, threat, or conspiracy to engage in conduct prohibited under Section 175 of this Title; or
- "(3) the development, production, stockpiling, transferring, acquisition, retention or possession, or the attempted development, production, stockpiling, transferring, acquisition, retention or possession of any biological agent, toxin, or delivery system of a type or in a quantity that under the circumstances has no apparent justification for

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prophylactic, protective, or other peaceful purposes."

(d) Section 178 (Definitions):"

All definitions relating to the BWAT Act are set forth in Section 279-3, above.

EFFECTIVE: 06/18/97

279-5 RELATED VIOLATIONS

(1) Title 15, USC, Section 2615 (Toxic Substances Control Act).

Refer to the MIOG, Part I, Section 249-2.2.

(2) Title 18, USC, Section 371 (Conspiracy).

Refer to the MIOG, Part I, Section 62-16.

(3) Title 18, USC, Section 876 (Extortion).

Refer to the MIOG, Part I, Section 9.

(4) Title 18, USC, Section 1365 (Tampering with Consumer Products).

Refer to the MIOG, Part I, Section 250-2.

(5) Title 18, USC, Section 2153 and Section (Biological Warfare).

Refer to the MIOG, Part I, Section 98-3.5.

(6) Title 33, USC, Section 1319 (Clean Water Act).

Refer to the MIOG, Part I, Section 249-2.4.

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FOIPA
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EFFECTIVE: 06/18/97

279-12 REPORTING PROCEDURES

(1) Follow procedures set out above in Sections 279-9 through 279-11.

(2) Prosecutive reports should be submitted to FBIHQ, when applicable.

EFFECTIVE: 06/18/97

279-13 DISSEMINATION OF REPORTS

Do not disseminate FBI communications to the USA, or other agencies locally without FBIHQ approval. Bureau communications will be disseminated to other appropriate federal agencies by FBIHQ, when appropriate.

EFFECTIVE: 06/18/97

279-14 CHARACTER - WEAPONS OF MASS DESTRUCTION (WMD)

279A - Weapons of Mass Destruction - Use,
Possession, Transfer, Production, Transport
- Domestic Terrorism

279B - Weapons of Mass Destruction - Attempt to Use,
Possess, Obtain, Manufacture or Transport -
Domestic Terrorism

279C - Weapons of Mass Destruction - Threats and All Other
Cases Relating to Weapons of Mass Destruction -
Domestic Terrorism

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- 279D - Weapons of Mass Destruction - Use, Possession,
Transfer, Production, Transport - International
Terrorism - (Group or Country)
- 279E - Weapons of Mass Destruction - Attempt to Use,
Possess, Obtain, Manufacture or Transport -
International Terrorism - (Group or Country)
- 279F - Weapons of Mass Destruction - Threats and All Other
Cases Relating to Weapons of Mass Destruction -
International Terrorism - (Group or Country)

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SECTION 280. EQUAL EMPLOYMENT OPPORTUNITY MATTERS

280-1 | BACKGROUND | (See MAOP, Part I, 4-5.3; Part II, 3-1.1,
3-1.2, 3-3.2, 3-4.5.) |

(1) Effective 6/14/95, all records pertaining to EEO matters, whether of an administrative or investigative nature, became part of the FBI's Central Records System under the 280 classification. Investigations of complaints of discrimination are handled under the 280A subclassification, while EEO administrative matters are handled under the 280D subclassification. The 280B and 280C subclassifications are NOT to be used for record retention, however, and should ONLY be utilized for TURK purposes.

(2) By way of background, since the establishment of the Office of Equal Employment Opportunity Affairs (OEEOA) in 1989, all EEO documentation had been maintained within the OEEOA, to include any and all documents produced by the Office of the General Counsel (OGC) during the appeal, hearing or discovery phases of EEO complaints. The 280 classification was originally established by the OEEOA and subdivided into 280A (EEO Complaint Investigations), 280B (EEO Counseling), and 280C (EEO Conferences). However, as set forth in an ALL SAC Memorandum dated 2/27/92, these subclassifications WERE FOR THE SOLE PURPOSE OF TRACKING TIME FOR TURK; therefore, no 280 classification files were to have been opened.

(3) With respect to investigations of complaints of discrimination, all related documents, even though generated by the FBI, are the property of the Equal Employment Opportunity Commission (EEOC) which, by federal statute, is the governmental entity responsible for the coordination of all federal EEO matters. As such, the proper handling of EEO records has been and continues to be subject to the recording requirements of the EEOC and to the published notice of availability of records pursuant to the Freedom of Information/Privacy Act (FOIPA) published by the EEOC (Title 29, Code of Federal Regulations (CFR), Part 1610, et seq.; 40 Federal Register (FR) 8171, February 26, 1975, as amended at 56 FR 10087, at 10900, March 14, 1991). The regulations make it clear that agencies act merely as custodians of the records for the EEOC.

(4) Following a study of the OEEOA in 1994, it was recommended to and approved by the Director that OEEOA convert its

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present filing system to a classified and serialized system that meets the needs of the OEEOA, EEOC, and the OGC. The OEEOA was in complete agreement with this position, provided that certain restrictions/limitations could be placed on the system to maintain the confidentiality of the information and ensure that appropriate FOIPA requests and file destruction policies adhered to EEOC regulations.

EFFECTIVE: 12/11/95

280-2 INVESTIGATIONS OF COMPLAINTS OF DISCRIMINATION

(1) Investigations of complaints of discrimination are required pursuant to Title 29, CFR, Part 1614.108 and are handled by Relief Supervisory Special Agents (hereinafter referred to as EEO Investigators) in the field who have been trained specifically in EEO matters (see MAOP, Part I, 4-5.2).

(2) Following the acceptance of all or part of a complaint of discrimination received by the OEEOA, an EEO Investigator will be assigned to fully address, in a fair and neutral manner, the ACCEPTED bases and issues for investigation. All information relative to the complaint will be transmitted by the OEEOA directly to the Investigator for review and initiation of the investigation. The Investigator's Division Head will also be notified of his/her assignment; however, no information relative to the complaint itself will be provided. The Investigator is NOT to discuss any aspect of the investigation with his/her division management.

(3) In all complaint investigations, the OEEOA is shown as the Office of Origin (OO) with a corresponding 280A file number. All records relative to the complaint that are produced by the investigation and/or obtained during the investigation, are to be maintained within the OEEOA. NO records are to be maintained within a field office or FBIHQ division, unless specific approval is granted by the OEEOA.

(4) It is absolutely essential during any stage of a complaint investigation, that information relative to the complaint be kept confidential to the extent possible. At no time are individuals to be made aware of the complaint or facts of the investigation, unless they are directly involved in the complaint investigation.

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EFFECTIVE: 12/11/95

280-2.1 Authority and Role of EEO Investigator

(1) EEO Investigators are authorized to administer oaths and require that statements of witnesses shall be under oath or affirmation. Investigators are authorized to investigate all aspects of complaints of discrimination, require all employees of the agency to cooperate with them in the conduct of the investigation, and require employees of the agency having any knowledge of the subject matter regarding the complaint to furnish testimony under oath or affirmation without a pledge of confidence.

(2) A complaint that is not successfully resolved in the initial stages and meets requirements for processing under prescribed EEO guidelines is assigned to an EEO Investigator. As neutral fact finders, EEO Investigators will conduct a fair, impartial and objective investigation of the facts relevant to the complaint issue(s) so that a determination can be made as to whether the action complained of was related or unrelated to any of the prohibited discriminatory factors (race, age, sex, sexual orientation, etc.). The investigation of allegations of discrimination in matters pertaining to sexual orientation is an entitlement derived from DOJ policy and not from EEOC regulations. In this regard, complainants are not entitled to a hearing before an Administrative Judge of the EEOC or an appeal to the EEOC. Upon completion of an investigation concerning a basis of discrimination based on sexual orientation, a Departmental Adjudication Officer will conduct a review and issue a final decision. Complaints accepted on a basis of sexual orientation will be investigated in the same manner as any other allegation of discrimination accepted by the Department. In the event a complaint is received which contains an allegation of discrimination based on sexual orientation and additional bases covered by EEOC regulations, all allegations will be investigated concurrently; however, following the investigation, those allegations not based on sexual orientation will be processed according to existing procedures outlined in 29 C.F.R. Part 1614. Investigators have no vested interest in the outcome of the investigation. They are not advocates of management or the complainant. Investigators draw no conclusions, make no findings of discrimination or recommendations relative to such findings. The factual record compiled by the investigator is submitted to the OEEOA in the form of a Report of Investigation (ROI).

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(3) Reports of Investigations are to be compiled in accordance with instructions and format contained in the most current edition of the "EEO Investigator's Training Guide," and guidance received in periodic issues of the "Helpful Hints" newsletter published by the OEEOA.

EFFECTIVE: 03/07/97

280-2.2 Files Available to Investigator (See MAOP, Part I, 4-5.1.2.)

(1) The Investigator is authorized to review all relevant files in connection with the investigation of the complaint. This includes relevant personnel files in the field offices as well as the Official Personnel File (OPF) at FBIHQ. Relevant OPFs include only the files of those persons logically connected to, or having some bearing on, the allegations of discrimination. In addition, the Investigator is authorized to review pertinent administrative records in field offices and FBIHQ which have a direct bearing on the issues being investigated. Such records include, but are not limited to, control files, medical records, administrative inquiry files of the Office of Professional Responsibility and Administrative Summary Unit, as well as written documentation and taped recordings of Career Board deliberations, to the extent such records have a bearing on the allegations raised by the complainant.

(2) With regard to field office and FBIHQ Career Board records, and/or field office or FBIHQ OPR records, Investigators should discuss the matter with the OEEOA and follow the established procedures set forth in the "EEO Investigator's Training Guide." Access to OPR documents is currently limited to the predication only for pending matters, or the investigative file on closed matters.

(3) It should be noted, however, that an Investigator seeking access to relevant Employee Assistance Program files must obtain the prior written authorization, or a statement evidencing such a waiver of confidentiality, from the subject of such files.

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280-2.3 EEO Investigation and Documentation

(1) The investigation will address a thorough review of:
(a) the circumstances under which the alleged discrimination occurred;
(b) the treatment of the complainant as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred (i.e., those similarly situated); and (c) any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant.

(2) When preparing the signed sworn statements reflecting the interview of each witness involved in an investigation, the Investigator will ensure that information regarding a person's membership or nonmembership in the complainant's group (i.e., the complainant's race, sex, etc.), needed to assist the fact-finder or other government official in any adjustment of the complaint or to make an informed decision on the complaint, shall be recorded in the investigative file. The term "investigative file" refers to the various documents and information acquired during the investigation, including signed sworn statements of the complainant and witnesses, and copies of, or extracts from records, policy statements, or regulations of the agency organized to show their relevance to the complaint or the general environment out of which the complaint arose.

EFFECTIVE: 12/11/95

280-2.4 Investigative Report/Review by the Office of the General Counsel

Upon completion of the investigation, the EEO Investigator will prepare a written investigative record, which will include all appropriate documents gathered during the investigation. These documents will be placed in a bound encasement and thereafter provided to the complainant through the Office of Equal Employment Opportunity Affairs (OEEOA). Inasmuch as a copy of the investigative record may

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eventually be provided to the Equal Employment Opportunity Commission, no classified documentation or any information the disclosure of which would violate any statute (as examples, the Privacy Act, Title 5, United States Code (USC), Section 552a, or the Freedom of Information Act, Title 5, USC, Section 552, as amended), may be placed in the file. To that end, it is essential that all material intended to be released to the complainant be referred for review by the OEEOA to Office of the General Counsel's (OGC) Civil Discovery Review Unit prior to such release. After OGC's CDRU completes its review, the OEEOA will release the investigative record to the complainant.

EFFECTIVE: 12/11/95

280-2.5 Theories of Discrimination

There are five recognized theories of discrimination, each requiring different investigative approaches and evidentiary standards. The five theories are: Disparate Treatment; Disparate or Adverse Impact; Perpetuation of Past Discrimination; Failure to Accommodate; and Retaliation.

(1) Disparate Treatment

(a) Definition and Description

Disparate Treatment is the most commonly alleged complaint. It occurs whenever "similarly situated" individuals of a different race, color, religion, sex, sexual orientation, national origin group, disabling condition or age, are accorded disparate treatment, or are treated differently, in the context of a similar employment situation.

(b) Investigation and Evidence

1. A PRIMA FACIE case of discrimination under this theory, as it relates to hiring or promotions, requires that the complainant: (a) be a member of a protected class (race, color, religion, sex, sexual orientation, national origin group, disabling condition or age); (b) be qualified for and have applied for a position for which applicants were sought (minimum qualifications are sufficient); and, (c) despite being qualified, was rejected.

Alternatively, element (b), above, may consist of the member of a

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protected group receiving disparate treatment in some term or condition of employment, e.g., disciplinary treatment, transfers, assignments, etc.

2. In pursuit of evidence regarding claims of discrimination under this theory, the investigator looks for a discriminatory motive which can be inferred from uncontroverted facts indicating difference in treatment.

3. To make a valid comparison of treatment, the investigator should determine who would be expected to receive the same treatment, and locate or identify other individuals who are situated in similar, or if possible, identical employment situations. Thereafter, the treatment afforded each is compared to support or refute the allegation that such factors as race, color, religion, sex, sexual orientation, or national origin group were considered in the employment decision at issue.

4. In response to the complainant's claim, management officials must have an opportunity to rebut the complainant's claims. In age cases, for example, the manager may be able to cite a "reasonable factor other than age" to account for the difference in treatment.

5. The investigator may then afford the complainant an opportunity to provide evidence showing that the management official's explanations are false or "pretextual" or in some way concealing discriminatory behavior.

(2) Adverse or Disparate Impact

(a) Definition and Description

Adverse impact results from an employment practice that, although applied equally to all applicants or employees, has the effect of excluding or adversely impacting upon persons in protected classes, in significant numbers. This most often occurs when a testing device or screening technique has an adverse impact on hiring or promotion of protected classes. For example, a hiring standard of 6 feet, 200 pounds, for Hawaiian police officers, would automatically exclude a disproportionate number of Asian applicants.

(b) Investigation and Evidence

1. Any policy or practice that, as an example,

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results in a proportionately lower selection rate for a protected class, and is not justified by a business necessity, constitutes a discriminatory policy. It is the consequences of the policy or practice, not the motivation, that is the key. Therefore, the complainant is not required to show proof of intent; instead, a statistically significant imbalance is relied upon to show the discriminatory impact of the challenged practice.

2. It is difficult in individual cases to prove a motive of discrimination. In the absence of direct evidence of motive, statistical data showing a pattern of nonselection or underutilization of the group in question may be sufficient to establish that motive. Adverse impact cases are generally "class action" cases, as opposed to investigations of allegations brought by individuals.

(3) Perpetuation of Past Discrimination

(a) Definition and Description

This situation occurs when the effect of past discrimination is being continued by the present operation of a neutral employment system. The employment system is neutral when it applies evenly to all applicants or employees.

(b) Investigation and Evidence

1. The theory is similar to the adverse impact theory in that there is no requirement that the complainant prove present discriminatory motive. Past discriminatory motive must be shown, along with evidence that a facially neutral employment policy perpetuates past discrimination. If such a circumstance is shown by plaintiff, the agency's response must justify the continued use of the policy as a business necessity.

2. In such instances, we are usually looking at the consequences of specific employment practices, along with evidence of a causal relationship between the past discrimination and the current policy's adverse effects.

(4) Failure to Accommodate

(a) Definition and Description

This situation occurs when an employer refuses to make reasonable accommodation for the religious practices or

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physical handicaps of employees and prospective employees unless to do so would create an undue hardship on the conduct of the employer's business.

(b) Investigation and Evidence

Accommodation is different from other theories of discrimination because proof of a failure to accommodate does not involve comparisons between the treatment accorded the complainant and other similarly situated employees, or a determination of whether neutral employment practices have an adverse impact on the employment opportunities of women and minorities. A PRIMA FACIE case of discrimination is established if a complainant shows that he or she informed the agency of the need for an accommodation, and there was a failure to do so. The agency is then given the opportunity to establish that accommodation would have created an undue hardship on the conduct of its normal course of business.

(5) Retaliation

(a) Definition and Description

This situation occurs when there is any act of discrimination, restraint, interference, coercion, or reprisal against any person because he or she has opposed the practices made unlawful by Title VII, the Rehabilitation Act or the Age Discrimination in Employment Act (ADEA), or because he or she participated in any stage of the administrative or judicial proceedings concerning a complaint. This section requires an investigator to thoroughly investigate allegations of mistreatment brought by previous complainants as well as any witnesses who have provided testimony in EEO proceedings or otherwise engaged in any EEO protected activity. As examples, a complaining party may raise allegations that, as a result of his or her participation in an EEO protected activity, some Bureau employee has assigned him or her to undesirable duties routinely assigned to others. One other example might be the failure of Bureau official(s) to select for promotion or assignment an eminently and obviously qualified candidate who happens to have been involved recently in EEO protected activity.

(b) Investigation and Evidence

The analysis of evidence in a retaliation case is similar to that in other disparate treatment cases. The investigator should first establish that the agency knew of a complainant's opposition to unlawful employment practices or his or

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her participation in the processing of a complaint, and the date when the agency became so aware. If the evidence indicates that the complainant was subsequently treated differently, it raises the inference of retaliation for the complainant's actions in opposing such employment practices. The agency must then show that the treatment was not related to the complainant's protected activity. The complainant could still prevail if the agency's explanation was, in fact, a pretext for discrimination.

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|SECTION 281. ORGANIZED CRIME/DRUG INVESTIGATIONS

| 281-1 JURISDICTION

(1) Title 18, United States Code, Sections 1961-1968; and Title 21, USC, Section 801 et seq.

(2) Attorney General Order Number 968-82, dated January 28, 1982 (See, Title 28, Code of Federal Regulations (CFR), Section 0.85) authorizes the Director of the FBI concurrently with the Administrator of the Drug Enforcement Administration (DEA), to investigate violations of the criminal drug laws of the United States. These violations are located in the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, also referred to as the Controlled Substances Act (Title 21, USC, Section 801 et seq.)

(3) In passing the Organized Crime Control Act of 1970, Public Law 91-452, Congress made a "Statement of Findings and Purpose," a portion of which details how organized crime derives power and wealth from illegal activities. The "Statement" appears in Part I, Section 182-1.1 of this manual.

EFFECTIVE: 11/01/93

| 281-2 COMMONLY USED STATUTES/PENALTIES (See MIOG, Part I, 245-1(2).)

The following are only the most commonly used statutes in prosecuting these crimes.

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281-2.1 Drug Statutes, Penalties, and Venue

EFFECTIVE: 11/01/93

281-2.1.1 Manufacture and Distribution of a Controlled
Substance; Title 21, U.S. Code, Section 841

To manufacture, distribute, dispense, or possess with
intent to manufacture, distribute, or dispense, a controlled
substance; or to create, distribute, or dispense, or possess with
intent to distribute or dispense, a counterfeit substance.

EFFECTIVE: 11/01/93

281-2.1.2 Use of a Communication Facility; Title 21, U.S.
Code, Section 843(b)

To knowingly or intentionally use any communication
facility in committing, causing, or facilitating the commission of any
felony act under subchapters I and II of Title 21. Each separate use
of a communication is a separate offense under this subsection.

EFFECTIVE: 11/01/93

281-2.1.3 Simple Possession, Title 21, U.S. Code, Section 844

To knowingly or intentionally possess a controlled
substance.

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EFFECTIVE: 11/01/93

281-2.1.4 Distribution To Persons Under Age Twenty-One, Title
21, U.S. Code, Section 845

Any person at least 18 years of age who distributes a
controlled substance to a person under 21 years of age.

EFFECTIVE: 11/01/93

281-2.1.5 Distribution or Manufacture In or Near Schools or
Colleges; Title 21, U.S. Code, Section 845a

Any person who distributes or manufactures a controlled
substance within 1,000 feet of a public or private school or college.

EFFECTIVE: 11/01/93

281-2.1.6 Employment or Use of Persons Under 18 Years of Age
in Drug Operations; Title 21, U.S. Code, Section
845b(a)

Any person at least 18 years of age who employs, hires,
uses, persuades, induces, entices, or coerces a person under 18 years
of age to violate the Controlled Substance Act or the Controlled
Substances Import and Export Act or assist in avoiding detection or
apprehension by any law enforcement official under those Acts. (See
281-2.1.7.)

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281-2.1.7 Employment or Use of Persons Under 15 Years of Age;
and Distribution of Controlled Substance to Employee
Under 18 Years of Age; Title 21, U.S. Code, Section
845b(d)

Any person who violates Title 21, USC, Section 845b(a)
(see 281-2.1.6 above) by providing or distributing a controlled
substance to any person under 18 years of age; or any person who
violates Title 21, USC, Section 845b(a) if the person employed or used
is 14 years of age or younger.

EFFECTIVE: 11/01/93

281-2.1.8 Distribution of Controlled Substance to Pregnant
Individual; Title 21, U.S. Code, Section 845b(f)

Any person who distributes any controlled substance to a
pregnant individual.

EFFECTIVE: 11/01/93

281-2.1.9 Attempt and Conspiracy; Title 21, U.S. Code, Section
846

Any person who attempts or conspires to commit any offense
defined in subchapter I (Title 21, USC, Sections 801 through 904).

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281-2.1.10 Continuing Criminal Enterprise (CCE); Title 21, U.S.
Code, Section 848(a)

(1) Any person, acting in a supervisory position involving five or more other persons, who commits a felony act under subchapters I and II of Title 21, and commits a continuing series of related violations, from which such person obtains substantial income and resources.

(2) Criminal Forfeiture - Any person convicted of engaging in a continuing criminal enterprise shall forfeit to the United States, in addition to any other forfeiture-

(a) the profits obtained by him/her in such enterprise, and

(b) any of his/her interest in, claims against, and property or contractual rights affording a source of influence over, the continuing criminal enterprise.

NOTE: Criminal forfeiture is under the exclusive direction of the court. In most instances the Agent's role is limited to supplying evidence to the court through indictment, testimony, investigation, etc., while the actual seizure and disposition of the property is carried out by the U.S. Marshal's Service.

EFFECTIVE: 11/01/93

281-2.1.11 Continuing Criminal Enterprise - Principal
Administrator; Title 21, USC, Section 848(b)

Title 21, USC, Section 848(b) requires the imposition of a life sentence for any person who engages in a continuing criminal enterprise (Title 21, USC, Section 848(a)) and is the principal (or one of several principal) administrators, organizers or leaders, and

(1) the violation involved at least: 30 kg. of heroin; 150 kg. of cocaine; 1.5 kg. of cocaine base; 3 kg. of PCP or 30 kg. of PCP mixture; 300 gm. of LSD; 12 kg. of n-phenyl-n propanamide or 3 kg. of a mixture of n-phenyl-n propanamide; 30,000 kg. or more of a mixture or substance containing marijuana or 30,000 or more marijuana

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plants regardless of weight; or 3 kg. or more of methamphetamine or 30 kgs. or more of a mixture or substance containing a detectable amount of methamphetamine; or

(2) the enterprise or any other enterprise in which the person was the principal (or one of several principals), administrator, organizer or leader, received \$10 million in gross receipts during any twelve-month period of its existence for the manufacture, importation or distribution of heroin, cocaine, PCP, LSD, fentanyl or fentanyl analogue.

EFFECTIVE: 11/01/93

281-2.1.12 Continuing Criminal Enterprise - Intentional Killing; Title 21, U.S. Code, Section 848(e)

(1) Any person engaging in or working in furtherance of a continuing criminal enterprise or engaging in an offense punishable under Title 21, USC, Sections 841(b)(1)(A) or 960(b)(1) "who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, violates Title 21, USC, Section 848(e)(1)(a).

(2) Any person who, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for a felony violation of the Controlled Substance Act (Title 21, USC, Sections 801-960), who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, state or local law enforcement officer engaged in, or on account of, such officer's official duties and such killing results, violates Title 21, USC, Section 848(e)(1)(b).

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281-2.1.13 Importation of Controlled Substances; Title 21, U.S.
Code, Section 952

To illegally import any controlled substance into the
United States from any place outside the United States.

EFFECTIVE: 11/01/93

281-2.1.14 Exportation of Controlled Substances; Title 21, U.S.
Code, Section 953

To illegally export any controlled substance from the
United States.

EFFECTIVE: 11/01/93

281-2.1.15 Possession on Board Vessels, etc., Arriving In Or
Departing From the United States; Title 21, U.S.
Code, Section 955

To unlawfully possess, on board any vessel, aircraft or
vehicle arriving in or departing from the United States, or the
customs territory of the United States, a controlled substance in
Schedule I or II or a narcotic drug in Schedule III or IV.

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281-2.1.16 Possession, Manufacture, Distribution For Purposes
Of Unlawful Importation; Title 21, U.S. Code,
Section 959

It is unlawful for any person to manufacture or distribute a controlled substance in Schedule I or II intending or knowing that such substance will be unlawfully imported into the United States. This section is intended to reach acts of manufacture or distribution committed outside the territorial jurisdiction of the United States. Any person who violates this section shall be tried in the U.S. District Court at the point of entry where such person enters the United States, or in the U.S. District Court for the District of Columbia.

EFFECTIVE: 11/01/93

281-2.1.17 Attempt and Conspiracy; Title 21, U.S. Code, Section
963

Any person who attempts or conspires to commit any offense defined in subchapter II (Title 21, USC, Sections 951 through 970).

EFFECTIVE: 11/01/93

281-2.1.18 Use of a Firearm During a Crime of Violence or Drug
Trafficking Crime; Title 18, U.S. Code, Section 924 (c) (1)
(See MIOG, Part I, 4-1.1.)

"Whoever, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm, shall, in addition to the punishment provided for such crime . . . , be sentenced to imprisonment for five years"

NOTE: In BAILEY V. UNITED STATES (U.S. Supreme Court, 12/6/95), the Court held that 924(c) (1) requires an "active" use of the firearm during the crime. Therefore, the nearby possession of a firearm, e.g., in the trunk of a car, during a drug trafficking or

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violent crime, does not qualify as a "use" under the statute. However, a person who "carries" a firearm, on or about his/her person during such a crime, could be properly charged under this statute.

EFFECTIVE: 05/10/96

|| 281-2.1.19 | Penalties

(1) Title 21, USC, Sections 841, 952, 953, 955, and 959: There are three levels of penalties according to the quantity of the controlled substance involved in the offense.

(a) A mandatory 10 years, maximum life, maximum \$4 million fine for offenses involving certain quantities of Schedule I and II controlled substances, including:

1 kilogram or more of heroin;
5 kilograms or more of cocaine;
1,000 kilograms or more of marijuana.

(b) A mandatory 5 years, maximum of 40 years, maximum \$2 million fine for offenses involving other quantities of the same controlled substances, including:

100 grams or more of heroin;
500 grams or more of cocaine;
100 kilograms or more of marijuana.

(c) Nonmandatory jail terms are to be imposed for offenses involving lesser quantities of the same controlled substances and all other Schedule I and II substances. Maximum penalties are 20 years' imprisonment and a \$1 million fine.

(d) Offenses involving less than 50 kilograms of marijuana, or less than 10 kilograms of hashish or less than 1 kilogram of hashish oil and all Schedule III Controlled Substances are subject to a maximum of 5 years' imprisonment and a \$250,000 fine.

(e) Offenses involving Schedule IV Controlled Substances are subject to a maximum of 3 years' imprisonment and a \$250,000 fine.

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(f) Offenses involving Schedule V Controlled Substances are subject to a maximum of 1-year imprisonment and a \$100,000 fine.

(g) Increased penalties are provided for persons having prior drug-related convictions, and when death or serious bodily injury results from the use of the substance in question. Increased fines are established if the defendant is other than an individual. Mandatory minimum jail terms may not be suspended or the defendant placed on probation or released on parole during the term of imprisonment. Mandatory terms of supervised release are imposed after the term of imprisonment. Defendants who provide substantial assistance in the investigation and/or prosecution of another criminal offender may be sentenced to less than the mandatory minimum jail term.

(2) Title 21, USC, Section 843(b): Maximum of 4 years and a \$30,000 fine for offenses involving the use of a communications facility.

(3) Title 21, USC, Section 844(a): Maximum of 1 year and a \$5,000 fine for the first offense involving simple possession.

(4) Title 21, USC, Section 845: Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to persons under age 21.

(5) Title 21, USC, Section 845(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution or manufacture in or near schools or colleges or within 100 feet of a playground, public or private youth center, public swimming pool or video arcade.

(6) Title 21, USC, Section 845b(a): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 18.

(7) Title 21, USC, Section 845b(d): Maximum of 5 years and a \$50,000 fine in addition to up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving employment of persons under age 15 or distribution to persons under age 18.

(8) Title 21, USC, Section 845(f): Up to twice the penalty authorized by Title 21, USC, Section 841(b) for the first offense involving distribution to a pregnant individual.

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(9) Title 21, USC, Section 846: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Act.

(10) Title 21, USC, Section 848(a): Not less than 20 years' to life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a Continuing Criminal Enterprise (CCE).

(11) Title 21, USC, Section 848(b): Life imprisonment and a fine not exceeding \$2 million for the offense of engaging in a CCE as the principal administrator.

(12) Title 21, USC, Section 848(e) (1) (a) and (b); up to life imprisonment or death penalty.

(13) Title 21, USC, Section 963: Same penalty for attempt and conspiracy as for the substantive offense of the Controlled Substances Import and Export Act.

EFFECTIVE: 05/10/96

|| 281-2.1.20 | Venue

Any district in which the offense was begun, continued or completed.

EFFECTIVE: 05/10/96

281-2.2 Racketeer Influenced and Corrupt Organizations
Statutes, Penalties, and Venue

(See MIOG, Part I, Sections 183-1.2 through 183-1.10.)

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EFFECTIVE: 11/01/93

281-2.2.1 Title 18, U.S. Code, Section 1961 (Definitions) (See MIOG, Part I, 183-1.2.)

(1) "Racketeering activity" was expanded under the "Motor Vehicle Theft Law Enforcement Act of 1984" to include interstate transportation of stolen motor vehicles and trafficking in certain motor vehicles or motor vehicle parts. State offenses are included by generic designation. Federal offenses are included by specific reference. The term "racketeering activity" is a key statutory term. Under Section 1962, racketeering activity is one of three prerequisites to commission of an offense. If there is no racketeering activity or no collection of an "unlawful debt," there can be no violation of the provisions of this title.

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency or instrumentality thereof;

(3) "Person" broadly includes any individual or organization that may hold any property interest. Any such "person" who violates the prohibitions of Section 1962 is subject to the sanctions of Sections 1963 and 1964, including forfeiture, divestiture, dissolution, and prohibition of future holding of interest.

(4) "Enterprise" includes associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by an individual or group capable of holding a property interest can be reached.

(5) "Pattern of racketeering activity" requires at least two acts of racketeering activity. One act in the pattern must be engaged in after the effective date of the legislation. The two acts necessary to establish the pattern must occur within a period of ten years, excluding any period the perpetrator was in confinement.

(6) "Unlawful debt" includes debts that are incurred either in connection with an illegal gambling business or an illegal usury business where the rate is at least twice the enforceable rate. This includes "loansharking" as a racketeering activity in connection

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with the acquisition or conduct of a legitimate business.

(7) "Racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect these sections.

(8) "Racketeering investigation" means any inquiry conducted by a racketeering investigator to determine if there has been any violation of these sections or any final order, judgment, or other decree of any court duly entered in any case or proceeding arising under these sections.

(9) "Documentary material" includes any books, papers, records, recordings, and other materials.

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General, or any department or agency employee designated by the Attorney General or Deputy Attorney General to carry out the powers conferred upon the Attorney General under these sections.

EFFECTIVE: 11/01/93

281-2.2.2 Title 18, U.S. Code, Section 1962 (Prohibited Racketeering Activities) (See MIOG, Part 1, 183-1.3)

(1) Section 1962 establishes a threefold prohibition aimed at stopping the infiltration of racketeers into legitimate organizations.

(2) Subsection (a) makes it unlawful to invest funds derived from a pattern of racketeering activity, as defined in Section 1961 (1) and (5), or collection of unlawful debt as defined in Section 1961(6) in any enterprise engaged in interstate or foreign commerce. The funds must have been derived by the investing party from activity in which he/she participated as a principal. An exception has been provided for the purchase on the open market of less than 1 percent of a company as securities where there is no degree of control in law or in fact to the investor.

(3) Subsection (b) prohibits acquisition or maintenance of an enterprise through the proscribed pattern of racketeering

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activity or collection of unlawful debt. There is no 1 percent limitation here as in subsection (a) because (a) focuses on legitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition with illegitimate funds. Subsection (b) focuses on illegitimate acquisition through the proscribed pattern of activity or collection of debt. Consequently, any acquisition meeting the test of subsection (b) is prohibited without exception.

(4) Subsection (c) prohibits the conduct of the enterprise through the prohibited pattern of activity or collection of debt. Again, the prohibition is without exception.

(5) Subsection (d) makes conspiracy to violate (a), (b), or (c) equally subject to the sanctions of Sections 1963 and 1964.

EFFECTIVE: 11/01/93

281-2.2.3 Title 18, U.S. Code, Section 1963 (Criminal Penalties) (See MIOG, Part I, 183-1.4.)

(1) Section 1963 provides criminal penalties--including criminal forfeitures--for violation of Section 1962.

(2) Subsection (a) The maximum penalty authorized under subsection (a) is a \$25,000 fine and imprisonment for 20 years. But, in addition, violations shall be punished by forfeiture to the United States of all property and interests, as broadly described, which are related to the violations. Interests in an enterprise include profits and proceeds derived from a violation of Section 1962.

(3) Subsection (b) provides for the entering of restraining orders and prohibitions and the requiring of performance bonds to prevent preconviction transfers of property to defeat the purposes of the new statutes.

(4) Subsection (c) provides rules governing the forfeited property. In general, it incorporates by reference the long-tested customs law provisions. It adds a provision that those rights which are not exercisable or usable by the United States shall expire. The United States is required to dispose of property as promptly as is practical, making due provision for the rights of innocent persons.

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281-2.2.4 Title 18, U.S. Code, Section 1964 (Civil Remedies) (See MIOG, Part I, 183-1.5.)

(1) Section 1964 provides civil remedies for the violation of Section 1962.

b2
EFFECTIVE: 11/01/93

281-2.2.5 Title 18, U.S. Code, Section 1965 (Venue and Process for RICO Statutes) (See MIOG, Part I, 183-1.6.)

The broad venue provisions of this legislation are set out at length in Section 1965. Any question of venue should be resolved with the United States Attorney with the concurrence of the Department.

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281-3 POLICY (See MIOG, Part I, 92-9, 245-4(2) & MAOP, Part II, 3-1.1 & 3-1.2.)

(1) To maximize the impact on the organized crime/drug problem, investigations conducted under the restructured Organized Crime/Drug Program (OC/DP) will concentrate on the major international and domestic criminal organizations and important regional groups controlling significant segments of the illegal activities in the United States.

(2) OC/DP CLASSIFICATIONS/ALPHA DESIGNATORS:

Investigations conducted under the OC/DP will concentrate on the criminal organizations, notwithstanding the statutory violations committed by the group. The following alpha designators apply to cases classified under the OC/DP as 92, 245, and 281 matters. Case titles should be carried as: Organized Crime/Drug Investigations (OC/DI) - Criminal Organization - Organizational Identity ([REDACTED])

b2 [REDACTED] (See MIOG, Part I, 281-3.1(1).)

281A - LCN and Italian Organizations - [REDACTED]

281B - Central/South American Organizations - [REDACTED]

281C - Mexican Organizations - [REDACTED]

281E - Asian Organizations - [REDACTED]

281F - Other Major Criminal Organizations - [REDACTED]

281G - African Organizations - [REDACTED]

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b2
281H - Russian/Eastern European/Eurasian
Organizations - [REDACTED]

281I - Caribbean Organizations [REDACTED]

281J - Alien Smuggling Organizations - [REDACTED]

NOTE: OC/Drug Racketeering Enterprise Investigations (REIs), which have as their goal the acquisition of information concerning the composition, structure, and activities of major organizations, will be conducted under the 92 classification and will bear the character "REI." The Intelligence Section will manage all OC/Drug REI matters with appropriate input by OC/Drug Operations Sections 1 and 2.

(3) All OC/DP investigations in the 245, 272 and 281 classifications may be opened on SAC authority. Furthermore, the SAC may wish to delegate this authority to the appropriate ASAC and/or SSA designated OC/DP manager or coordinator. Any such delegation, however, must be in writing.

(4) All OC/DP investigations of criminal groups or organizations will be conducted under the 281 classification.

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XXXXXXFEDERAL BUREAU OF INVESTIGATION
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1 Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

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EFFECTIVE: 10/01/97

281-3.1 Investigations Regarding Sports Teams

(1) Personal use and/or distribution cases concerning players of professional or amateur sports teams do not warrant FBI investigation unless the player's involvement in the operation would meet the criteria set forth in MIOG, Part I, 281-3(2).

(2) If an investigation is not warranted by the FBI, information regarding the use and/or distribution by particular players should be indexed for future retrieval and, if appropriate, referred to DEA or local/state authorities. Field divisions should advise FBIHQ, Organized Crime/Drug Branch (OC/DB), by airtel of the facts in these matters.

(3) If an investigation is warranted, in addition to the drug trafficking violation, Agents should be cognizant of potential

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sports bribery and illegal gambling violations. The involved players/trainers/coaches should be interviewed regarding these additional matters at the appropriate time.

EFFECTIVE: 11/01/93

281-4 INVESTIGATIVE/REPORTING PROCEDURES

OC/Drug Investigations will generally be complex investigations and should be closely coordinated with FBIHQ and with the appropriate United States Attorney.

EFFECTIVE: 11/01/93

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EFFECTIVE: 07/20/95

281-4.1.1 Clandestine Laboratories (See MIOG, Part I, 281-8.1.5.)

(1) Investigations involving clandestine laboratories should be initiated as set forth in MIOG, Part I, 281-4.1 with a particular note that DEA has an [REDACTED]

(2) Special caution must be taken relative to the seizure of clandestine laboratories by Agent personnel. The common presence of explosive chemicals and the delicate nature of closing down an in-process operation presents acute dangers.

(a) FBI personnel will not KNOWINGLY attempt the seizure of a laboratory without the presence of an experienced DEA chemist.

(b) The initial entry into the laboratory will be limited to the arrest team whose immediate objective is to secure the subjects present. Once this is accomplished the DEA chemist will enter the site, conduct an overall survey of the operation, and then shut down any ongoing chemical process.

(c) Law enforcement personnel should not attempt to shut down any ongoing chemical process or tamper with laboratory equipment unless under the direct supervision of the DEA chemist.

(d) Under no circumstances will there be any smoking, eating or drinking on the laboratory site. Agents should avoid placing their hands on or near their mouths or breathing strong vapors.

(e) Dry-type fire extinguisher, neoprene gloves, safety glasses and suitable air filtration masks should be on hand to assure the safety of the personnel involved.

(f) Photographs of the facility should be taken with

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(except b/b2-den)

4.1.1 Info prev. rel. - see

Pt 1 Sec. 12-7.1 (p 58.05 & 58.06)

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an electronic flash, NOT flash bulbs.

(g) Personnel not engaged in the dismantling and inventorying of the evidence must stay away from the processing area.

(h) The case Agent, together with the chemist, will determine the appropriate means of processing the evidence.

(i) Drug evidence (finished product) should be processed in accordance with instructions set forth in MIOG, Part I, 281-8 through 281-8.1.11.

(j) Laboratory equipment: process as nondrug evidence, or, if it is to be submitted to the DEA laboratory for trace analysis, process as drug evidence.

(k) Miscellaneous items instrumental to the laboratory operation, but not needed as evidence (e.g., bulk quantities of glassware, nonhazardous chemicals, etc.): photograph and seize for forfeiture under Title 21, USC, Section 881.

(3) Hazardous Chemicals

(See MIOG, Part I, 281-8.2 & 281-8.2.1.)

EFFECTIVE: 11/01/93

281-4.1.2 Funding Drug Cases and Purchase of Drug Evidence

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~~See old Sec 12~~

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Justification for employing this technique must be documented in the field office file, if approved by the SAC, or included in the communication requesting FBIHQ authority for its use.

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EFFECTIVE: 07/05/94

281-4.1.3 Fronting of Funds for Drug Purchases

(1) As a matter of general policy, Government funds should not be "fronted" (advanced on the promise of a subsequent delivery of drugs). When this technique is deemed necessary, prior FBIHQ authority must be obtained. In requesting authority, an appropriate communication should be submitted to FBIHQ detailing the circumstances, plans for minimizing the risk of loss and justification for the use of this technique.

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(2) Prior FBIHQ authority is not required to advance funds for purchases of [REDACTED] on the promise of a subsequent delivery of drugs. SACs are authorized to approve the fronting of drug purchase money in those instances which, in the judgment of the SAC, justify utilizing this technique. The circumstances and justification for employing this technique must be documented in the field office file.

EFFECTIVE: 11/01/93

281-4.1.4 Reverse Undercover Operations (RUO)

(1) An RUO involves an undercover (UC) technique in which the UCA, CW, or informant poses as a drug seller or trafficker rather than a drug buyer. RUOs and the tactics employed in their execution [REDACTED] present unique circumstances and involve certain risks and dangers which can be minimized only through close managerial control, careful planning, and discreet coordination with other federal, state, and local law enforcement agencies. [REDACTED]

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(2) Authority to participate in a domestic RUO rests with the SAC in situations involving [REDACTED]

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EFFECTIVE: 07/24/96

281-4.1.5 Furnishing Controlled Substances and Allowing Drugs
to Enter Traffic

(1) There are certain circumstances in which it is advantageous to a priority investigation to furnish a controlled substance to a subject through a UCA, CW, or informant. In these instances, the Government, after having prior possession, makes a conscious decision to put them into traffic. This highly sensitive technique requires the approval of the CID Section Chief responsible for the criminal investigative program, in unilateral FBI investigations or joint investigations with other law enforcement agencies. While the concurrence of the DEA Administrator is not necessary in these scenarios, DEAHO will be notified of the intended drug walk by FBIHQ. In requesting authority to allow drugs to enter traffic, a priority, secure teletype should be submitted to FBIHQ, summarizing:

- (a) The facts of the case;
- (b) Source of drugs (whether Government is the source or acting as a broker);
- (c) The importance of the investigation or significance of the trafficker;
- (d) Amount, purity, and type of substance to be released;
- (e) Objectives of furnishing controlled substances and allowing drugs to enter traffic;
- (f) Statement as to any incriminating conversations which have been recorded or source information which establishes the subjects' prior involvement or predisposition to engage in drug trafficking;

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(g) A statement reflecting that appropriate law enforcement agencies have been contacted to preclude their inadvertent involvement in this sensitive investigative technique;

(h) Statement detailing security procedures to be utilized;

(i) Concurrence of the prosecuting attorney for the utilization of the technique;

(j) Where a DEA Laboratory is the source for the drugs, a statement that the DEA Laboratory has been contacted and advised as to the type of drug needed, purity, packaging, amount, and date when required;

(k) Name of the Agent(s) authorized to receive the drugs and name of supervisor handling the case.



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281- 4.1.6 p.w. rel. 12-9.1.1

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[REDACTED]

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EFFECTIVE: 11/01/93

281-4.1.10 Drug Show Scenarios

(1) In some instances, in order to develop evidence of a subject's involvement in a major drug conspiracy, CWS, informants, or UCAs may pose as drug manufacturers or distributors which may require the display of quantities of controlled substances.

(2) |Deleted|

(3) Each field office will ensure coordination with the appropriate agencies in order to avoid a confrontation situation.

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EFFECTIVE: 07/24/96

281-4.1.13 [REDACTED]

[REDACTED]

NOTE: 14 C.F.R. 91.12 permits common carriers to cooperate with law enforcement in transporting shipments of controlled substances.

[REDACTED]

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EFFECTIVE: 06/10/94

281-4.2 Civil Investigative Procedures for OC/DP Cases (See MIOG,
Part I, 183-3.1.)

(1) These investigations are conducted pursuant to Title 18, USC, Section 1964(a) (equitable relief) and/or 1964(c) (treble damages) and provide the Government with powerful tools, in the form of permanent injunctions and organizational reformation, to eradicate entrenched criminal influence by disassociating the criminal enterprise from its economic base. The general investigative procedures of MIOG, Part I, 183-3 are applicable to civil investigations. Civil investigative target selection and vigorous enforcement of injunctive orders by the FBI provide program managers and squad supervisors with new opportunities to achieve success in their respective investigative areas. Examples of these injunctive orders and remedial actions range from the lifetime bar of individuals from their profession or craft to restoration of democratic processes (union election reform) and competitive business practices (removal of extortionate payments.)

(2) Investigative experience has demonstrated that the composition of the civil complaint contributes significantly to the success of the litigation and the protection of Bureau interests. The complaint must be structured to protect the integrity of ongoing criminal investigations and programs, e.g., informants, from inadvertent disclosure. Government attorneys litigating a civil investigative matter must adhere to the strict provisions of the Federal Rules of Civil Procedure (FRCP) which prohibit their access to, or use of, certain privileged information derived from the criminal investigative process. To satisfy the FRCP and to assure Bureau interests, a segregation process for this information has been developed and successfully employed in prior civil investigations of both national and local targets. The process requires that all documentation or other supporting evidence used in the case be reviewed and coordinated by personnel from the Office of the General Counsel, Civil Discovery Review Unit (CDRU). The CDRU will conduct comprehensive fieldwide file reviews and indices searches for all subjects prior to complaint filing. Subsequently, the CDRU will conduct similar reviews and searches to satisfy court-ordered discovery motions after the complaint is filed. This review process permits the CDRU to excise protected information by asserting various constitutional, statutory, and governmental privileges, prior to disclosure to Government attorneys for complaint and/or trial

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preparation.

(3) In view of the complexity of this investigative technique, the demands made on both field and FBIHQ resources, and its impact upon criminal investigations nationwide, all civil investigations will require approval from the FBIHQ substantive section prior to case initiation. The field division will forward to FBIHQ a copy of the draft complaint coincidental to the United States Attorney's submission of the draft complaint to the Department of Justice (DOJ). The draft complaint will be reviewed by the CDRU and substantive section and assessed for discovery impact on FBI files and informant sources as well as potential resource dedication for processing.

EFFECTIVE: 09/09/94

281-4.3 Department Policy Concerning RICO Investigations
(See MIOG, Part I, 183-6.)

(1) In its guidelines concerning Title IX of the "Organized Crime Control Act of 1970," the Department has issued instructions that no criminal or civil prosecutions or grand jury investigations are to be pursued without the initial clearance of the Department.

(2) In addition, the Department has indicated that the Attorney General may designate any department or agency to conduct investigations and, in the absence of such designation, jurisdiction to conduct investigations for violations lies with the Agency having jurisdiction over the violations constituting the pattern of racketeering activity listed in Title IX of the "Organized Crime Control Act of 1970."

EFFECTIVE: 11/01/93

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281-5 REPORTING REQUIREMENTS

EFFECTIVE: 07/20/95

281-5.1 Criminal Investigations (See MIOG, Part I, 183-8.1, 245-5
& 281-4.1; MAOP, Part II, 10-9(20).)

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EFFECTIVE: 07/20/95

| 281-5.2 Civil Investigations (See MIOG, Part I, 183-8.2.)

EFFECTIVE: 11/01/93

| 281-6 INTERNATIONAL INVESTIGATIONS

EFFECTIVE: 11/01/93

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281-6.1 Conduct of Foreign Investigations

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(2) In FBI drug investigations where there is minimum DEA participation, the request for foreign drug investigations will be transmitted by teletype to FBIHQ.

EFFECTIVE: 11/01/93

281-6.2 International Travel by FBI Personnel, Cooperative Witnesses (CWs) or Informants (See MIOG, Part II, 23-8.2.)

(1) Certain investigations may require FBI personnel, CWs, or informants, to travel to foreign countries in furtherance of an OC/Drug investigation. In all foreign countries the American Ambassador is the personal representative of the President of the United States and represents the highest U.S. authority in that country. Therefore, no foreign activity may occur without prior notification to FBIHQ, where the necessary liaison and notification procedures will be effected.

(2) FBI personnel, CWs or informants will not be allowed to travel internationally in connection with matters involving criminal investigative programs without approval of the appropriate CID Section Chief.

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| 281-7 ADMINISTRATIVE SUBPOENAS

EFFECTIVE: 11/01/93

| 281-7.1 Authorization

(1) Title 21, USC, Section 876, authorizes the Attorney General to subpoena witnesses, compel attendance and testimony of witnesses, and require the production of records relevant to a controlled substance investigation. This authority has been redelegated through the Director of the FBI to SACs, ASACs, and SSRAs.

(2) This subpoena may compel the witness to attend, testify, or produce records from any place within the jurisdiction of the United States; however, a witness may not be required to travel more than 500 miles from the place he/she was served in order to attend the hearing. Witnesses will be paid the same fees and mileage that are paid witnesses in United States courts.

EFFECTIVE: 11/01/93

| 281-7.2 Service of Administrative Subpoenas

Administrative subpoenas (FD-617) may be served by any person designated in the subpoena to serve it. Proof of service affidavit will consist of the party who served the subpoena completing the "certification of service" section on the reverse side of the original copy of the FD-617.

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281-7.3 Enforcement

The United States court in the jurisdiction of the investigation or residence of the subject may order compliance with the subpoena. Failure to comply with this court order may be punished by contempt of court proceedings.

EFFECTIVE: 11/01/93

281-7.4 Instructions

(1) Administrative subpoenas are to be used only in investigations involving violations of the Controlled Substances Act (Title 21, USC, Section 801 et seq.).

(2) Restraint should be exercised in the use of the administrative subpoena as it is not a substitute for a search warrant.

(3) Primary use of the administrative subpoena will be in obtaining record information from telephone and telegraph companies, hotels, utilities, banks, and other business institutions. When obtaining bank records, Agents must comply with the Right to Financial Privacy Act.

(4) The subpoena (FD-617) is printed in two copies, original and attested copy.

(5) The service return is located on the reverse side of the original copy. The original with executed return of service will be kept in the case file. A photocopy of the original should be maintained in a control file for administrative subpoenas in each field division.

(6) The attested copy of the subpoena should be delivered to the person named therein.

(7) FBIHQ, Office of the General Counsel, must be contacted prior to any administrative subpoena for records not in the hands of a third party (i.e., subjects and associates).

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NOTE: Administratively subpoenaed information is not rule 6(e) material.

(8) In instances where an office of origin is requesting information to be subpoenaed by an auxiliary office, either the office of origin or the auxiliary office may issue the administrative subpoena(s). In either case the original subpoena should be forwarded to the office of origin along with the subpoenaed information.

EFFECTIVE: 07/20/95

281-8 EVIDENCE HANDLING (CONTROLLED SUBSTANCES) (See MIOG, Part I, 281-4.1.1(2) (i).)

EFFECTIVE: 11/01/93

281-8.1 Drug Evidence (See MIOG, Part I, 281-4.1.1(2) (i).)

(1) Two Agents/officers (not support employees), one designated the sealing Agent/officer and one the witnessing Agent/officer are responsible for ensuring that drug evidence is sealed, transmitted for laboratory analysis, or placed in storage. Opening and resealing of drug evidence must be conducted in the presence of at least two Agents/officers.

(2) Laboratory analyses of seized drugs will be conducted by the DEA laboratories. Whenever the package of drug evidence is not prohibitively large, the entire package should be heat sealed in plastic bags at the earliest opportunity. DEA Form 7 is to be utilized when transmitting drug evidence to the DEA laboratory.

(3) Certain procedures should be followed when filling out DEA Form 7. Failure to do so can create problems for DEA laboratories. (See also MAOP, Part II, Section 2-4.4.7 re execution of DEA Form 7.)

(a) The form should be typed. Handwriting does not print through to all copies.

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(b) There is a limit of three exhibits per each form. DEA laboratories use the top page of the form as the original report and there is not sufficient space for the results of analyses of more than three exhibits.

refer [REDACTED]

[REDACTED]

(e) Each exhibit accompanying DEA Form 7 should be placed in a heat-sealed pouch.

(f) File and exhibit numbers should be placed on all pouches so they can be matched with the accompanying correspondence.

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281-8.1.1 Weight Determinations (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.9.)

(1) Investigative personnel will weigh and record all drug evidence at time of seizure or as soon thereafter as practicable. This initial weight will be prefaced by the word "approximate" in recording the weight on an FD-302 or memorandum. The DEA laboratory weight will continue to be the official weight for prosecutive and statistical accomplishment purposes.

(2) This initial weighing should be accomplished in sealed KAPAK containers on a scale capable of weighing in gram increments. If the field-reported gross weight varies by 1 percent or more from the gross laboratory weight, the appropriate squad supervisor will prepare a memorandum of explanation for the SAC or SAC's designee. Variations will be reported to field offices by the DEA laboratory upon completion of the analysis.

(3) If the drug seizure involves tablets or capsules, the number of tablets or capsules can be determined by either of two methods:

(a) By actual count if the quantity is small; or

(b) If too voluminous to count, by computation based on relative weights, i.e., count and weigh 100 units to determine a unit weight and then divide this weight into the net weight of the entire exhibit to determine the total number of units.

(4) If liquids are involved, the gross quantity will be reported by volume. Estimates will be based on the known or apparent size of the container.

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281-8.1.2 Laboratory Reports (See MIOG, Part I, 281-4.1.1(2)(i).)

On completion of laboratory analyses the DEA Laboratory Report (copy 1 of DEA Form 7) will be returned to the submitting field division. DEA Laboratory Reports should be filed in the 1A exhibit section of the case file.

EFFECTIVE: 11/01/93

281-8.1.3 Nondrug Forensic Examinations (See MIOG, Part I, 281-4.1.1(2)(i).)

(1) All other forensic laboratory examinations, such as firearms, documents, biological materials, etc., will continue to be performed by the FBI Laboratory.

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EFFECTIVE: 10/16/96

281-8.1.4 Storage of Drug Evidence (See MIOG, Part I,
281-4.1.1(2)(i).)

(1) Upon completion of the analysis of DEA Laboratory and/or FBI Laboratory, all evidence will be returned to the submitting field division for retention and eventual destruction. The DEA Laboratory and FBI Laboratory will not accept the responsibility for storage of drug evidence.

(2) The retention of drug evidence should be in accordance with instructions set forth in MAOP, Part II, 2-4.4.7. The intrinsic value of drug evidence requires the establishment of strict, documented accountability.

EFFECTIVE: 11/01/93

281-8.1.5 Storage of Bulk Drug Evidence (See MIOG, Part I,
281-4.1.1, 281-8.2.2; MAOP, Part II, 2-4.4.7.)

(1) Whenever feasible, store bulk quantities of drug evidence in the field office evidence room except in the case of hazardous chemicals.

(2) ~~If~~ the quantity of drug evidence is of such volume that it cannot be secured in the field office evidence room, it may be stored in a bonded warehouse and must be afforded appropriate security.

(3) Any other alternative deemed appropriate by the SAC, after consultation with FBIHQ, and after careful consideration of the safety of employees, possible contamination of evidence, chain of custody restrictions, security of evidence, and other pertinent factors, will be acceptable.

(4) From a safety point of view, normal office space building codes are considered adequate for storage of drugs. However, the manner in which drugs of abuse are packaged is more significant than the location where they are kept. Large quantities of drugs can

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be sealed in any type container available such as heat seal pouches, heavy plastic sheets or paint cans so long as the drug cannot leak from its package and contaminate the storage area. The seals should be airtight since spilled drugs can inadvertently be picked up on the hands or temporarily be made airborne by a sudden burst of air.

(5) Wet or freshly harvested marijuana will mildew if not thoroughly dried before being permanently stored. It is also advisable to fumigate marijuana to curb insect growth within the bundles. Additionally, marijuana and crude preparations of some other drugs, such as cocaine, PCP and methamphetamine, are highly odoriferous and will require more than normal ventilation for odor control. It is noted that these odors are not caused by the active drug substance itself, but rather by impurities in the preparation.

(6) Drugs should be stored in a reasonably controlled environment as elevated temperatures or humidity may result in some drug decomposition. Thus, with some additional ventilation, along with adequately sealed packaging, an area, such as the Bulky Evidence Room of most field offices, is suitable for drug storage.

EFFECTIVE: 10/16/96

281-8.1.6 Destruction of Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i); MAOP, Part II, 2-4.4.7.)

(1) Controlled substances will not be destroyed prior to indictment, except for those routinely destroyed under the bulk destruction policy set forth in MIOG, Part I, 281-8.1.7. The following, therefore, applies only to NON-BULK drug evidence.

(2) Postindictment Destruction. The U.S. Attorney's Manual, Chapter 101, page 22, provides in part that "After the return of an indictment, at the arraignment and plea, the U.S. Attorney shall file a 'Notice of Intent to Destroy Controlled Substances' (hereinafter 'Notice') in all cases unless he/she believes unusual circumstances justify maintaining all seized evidence for use at trial. The U.S. Attorney has the sole and exclusive authority to make such a decision and when such circumstances are present, said 'Notice' will not be filed with the court and the controlled substances shall not be destroyed.... At the time the 'Notice' is filed with the court at the arraignment and plea, a copy shall be immediately served upon the defendant, or his/her attorney." Seized evidence will not be

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destroyed until the field office receives a copy of the "Notice" and has complied with the procedures set forth therein.

(3) Posttrial Destruction. If "Notice" is not filed, seized evidence will be held until the conclusion of the judicial proceedings, to include the appellate process. Disposition of controlled substances in such cases should be approved in writing by the U.S. Attorney and follow the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL.

(4) Seizure Without Trial. In those instances where there is no identifiable defendant involved and a decision is made not to pursue the investigation, seized controlled substances will be disposed of in accordance with the forfeiture procedure set forth in the FORFEITURE AND ABANDONED PROPERTY MANUAL. Final destruction should follow the provisions of MIOG, Part I, 281-8.1.6(5) below.

(5) Following either a determination by the U.S. Attorney that seized controlled substances need no longer be retained for evidence and proper notice is given or a decision is made to discontinue an investigation involving seized controlled substances, the forfeiture provisions of the FORFEITURE AND ABANDONED PROPERTY MANUAL should be followed. Prior to destruction, the Supervisor or Relief Supervisor and the case Agent will withdraw the drugs from storage and ensure that all evidence seals are intact. Actual destruction of the drugs is to be accomplished by burning in the presence of the case Agent, his/her Supervisor or Relief Supervisor, and one other witness. [See 281-8.1.10 for documentation of evidence destruction.] (See MIOG, Part I, 281-8.1.8(3)(a).)

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281-8.1.7 Destruction of Bulk Drug Evidence (See MIOG, Part I, 281-4.1.1(2)(i) & 281-8.1.6.)

(1) The Bulk Drug Evidence Destruction Rule became effective 4/14/88 and applies to both the FBI and DEA. It is not retroactive and cannot be used to authorize destruction of bulk drug evidence seized prior to that date. The rule requires that threshold amounts of seized Schedule I or II drugs be retained and stored as evidence pending conclusion of trials and appeals. The bulk of the drug evidence in excess of the threshold amount may be destroyed at the direction of the FBI SAC after 60 days from the date that the

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FBI's written notice of the seizure is provided to the appropriate United States Attorney's (USA) Office. Upon receipt of the written notice of the seizure, the USA, or his/her designee, may provide written concurrence for destruction of the seized bulk drug evidence, or the USA may submit a written request that an exception be granted by the SAC. Should the SAC deny the exception request, the USA may appeal the denial to the Assistant Attorney General (AAG) of the Criminal Division. The appeal must be filed with the AAG within 30 days of the SAC's denial. Destruction is stayed pending the final decision of the AAG.

(a) Field offices are not required to report bulk drug seizures to FBIHQ. The only exception to this policy will occur when an SAC's decision to retain or destroy bulk drug evidence is appealed by a USA to the Department of Justice. In the unlikely event that such a dispute arises and cannot be resolved between the SAC and USA, FBIHQ must be notified.

(b) The authority to request an exception, and the authority to grant or deny an exception request rests solely with the USA and the SAC, respectively, and cannot be delegated. Since the bulk of the drug evidence will be destroyed prior to trial, it is imperative that high-quality, large-format photographs of the total seizure be made and properly documented. It is possible that some Judicial Districts or Circuit Courts of Appeal may have established legal precedent prohibiting the destruction of bulk drug evidence seizures prior to trial. Such precedent is controlling, but the SAC should urge the USA's Office to file immediate appeals to such orders.

(2) Exceptions to the destruction rule should be extremely limited. Exceptions should not be granted by an SAC based on rationales such as: "jury appeal," "to forestall legal challenges," or as a matter of "prior practice," as opposed to legal precedent in the district of seizure.

(3) The rule defines a bulk seizure as any one seizure from a single source, equal to or greater than the quantity specified as the threshold amount. With the exception of marijuana, the rule sets out the threshold amounts of specific Schedule I and II Controlled Substances. The threshold amounts should be exceeded by 10 percent of this amount to offset the weight of packaging materials. For example, the threshold amount for heroin is 1 kilogram; however, 1.1 kilograms should be retained as a threshold amount to ensure that mandatory minimum sentencing requirements can be met. The threshold amounts of Schedule I and II Controlled Substances are as follows:

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- (a) Two kilograms of a mixture or substance containing a detectable amount of heroin;
- (b) Ten kilograms of a mixture or substance containing a detectable amount of--
 - 1. coca leaves, except leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - 2. cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - 3. ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - 4. any compound, mixture, or preparation which contains any quantity of any of the substances referred to in the subclauses above;
- (c) Ten kilograms of a mixture or substance which contains cocaine base;
- (d) 200 hundred grams of phencyclidine (PCP) or two kilograms of a mixture or substance containing a detectable amount of PCP;
- (e) 20 grams of mixture or substance containing a detectable amount of Lysergic Acid Diethylamide (LSD);
- (f) 800 hundred grams of a mixture or substance containing a detectable amount of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide (commonly known as fentanyl) or 200 grams of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N(1-(2-phenylethyl)-4-piperidinyl) propanamide; or
- (g) Two kilograms or 2,000 dosage units (tablets, capsules, or as determined by the regional DEA laboratory) of a mixture or substance containing a detectable amount of any Schedule I or II Controlled Substance in the Controlled Substances Act for which no threshold amount has been specified.
- (h) There is no threshold amount defined for marijuana. Instead, a representative sample will be retained. Procedures regarding marijuana sampling will be set out under the 'Bulk'

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Marijuana Seizures Section. (See MIOG, Part I, 281-8.1.8(4).)

(4) An explanation of the relationship between threshold amounts and bulk amounts is best illustrated by an example. A shipment consisting of 50 kilograms of cocaine is seized. The rule defines the threshold amount for cocaine as ten kilograms. The total seizure must be weighed and photographed. Thereafter, the threshold amount, ten kilograms, plus one kilogram to offset packaging materials included in the weighing process, will be retained and stored in a secure vault pending conclusion of trial. The 39-kilogram bulk amount will be stored in a secure facility for the 60-day holding period. If an exception request to destruction is not filed by the USA, the 39 kilograms will be destroyed on the authority of the SAC as soon as possible after the 60-day period has expired. It should be noted that in the above example, any seizure over ten kilograms of cocaine, or over the threshold amount of any specified drug, qualifies as a bulk drug seizure and the destruction procedures of this rule will apply.

(5) Notice and Appeal

(a) Verbal Notice: The case Agent or Supervisory Special Agent will telephonically advise the AUSA assigned to the case or the district duty AUSA that a bulk drug evidence seizure has been made. The notifying Agent will provide to the AUSA specific details regarding the subject(s) identity, the FBI case file number, the identity of case Agent and Supervisor, the date, time and place of the seizure, the type of drug seized and an estimate of the quantity seized. Verbal notice must be given to the appropriate AUSA no later than the business day following the date of actual seizure.

(b) Written Confirmation: A letter confirming the verbal notice will be forwarded to the USA with a copy directed to the AUSA receiving verbal notice no later than five workdays after the date of the actual drug seizure. In addition to the file copy of this letter, two additional copies should be prepared. One copy will be routed to the SAC who will retain this copy in a control file specifically designated for Bulk Drug Evidence Seizures. The second copy will be retained by the squad supervisor as a tickler copy available for ready reference. Other control mechanisms are left to the discretion of the SAC.

(c) Letter Format: Confirmation form letters may be devised by individual field offices. The letter of confirmation will contain the phrase, "BULK DRUG EVIDENCE SEIZURE," in capital letters on the first reference line of the letter, followed by the full case title and file number. The letter should contain, at a minimum, the

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place, date, and time of seizure; the names of all subjects associated with the seizure; the names and telephone numbers of the case Agent and his/her supervisor; the type of drug seized; and the estimated weight of the total seizure. The final paragraph of the letter must provide the date after which the bulk of the evidence may be destroyed. This date will be calculated as 60 CALENDAR days from the date of the letter giving the USA notice of the seizure. This paragraph will also inform the USA that a request for an exception to the destruction procedure must be in writing directed to the personal attention of the SAC.

(6) Exception Requests: The USA may request an exception to the destruction process at any time during the 60-day holding period. The SAC must personally review and either approve or deny the USA's written request for an exception. Granting of an exception is left to the sole discretion of the SAC; however, the extended storage of large-volume bulk drug seizures is clearly contrary to the spirit and intent of this policy. A USA should provide compelling reasons in support of an exception to destruction request. Copies of this request will be filed in the same manner as notice of seizure letters.

(7) SAC Response: The SAC will personally review and sign the letter either granting or denying the USA's request for an exception. Responses should be provided within ten calendar days of the date of the request. An expeditious response is of particular importance when a USA's request for an exception is being denied. The SAC's letter of denial will inform the USA that written appeals should be directed to the AAG of the Criminal Division within 30 days from the date of the denial letter. The USA must also direct a copy of this AAG appeal letter to the personal attention of the SAC in order to stay the destruction procedure. A failure to appeal the denial, or to provide a copy of the letter of appeal to the SAC, will result in the destruction of the bulk drug evidence as soon as practical after the 60-day holding period or the subsequent 30-day appeal period has expired. It should be noted that bulk evidence destructions cannot be conducted prior to the expiration of the 60-day holding period.

281-8.1.10. (8) Documentation of Destruction: See MIOG, Part I,

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281-8.1.10 Documenting Bulk Drug Destruction (See MIOG, Part I, 281-4.1.1(2)(i), 281-8.1.6 and 281-8.1.7(8).)

(1) Upon completion of the evidence destruction, the case Agent will prepare an electronic communication (EC) to the file setting forth the date, method, and location of the destruction and a complete description of items destroyed and the names of the Agents who participated in or witnessed the removal of the evidence from storage and its destruction. This EC will be initialed by all participants and serialized in the file. Appropriate destruction notation will be made on the FD-192 in file with a cross-reference to the destruction EC. The evidence copy of the FD-192 will be placed in the 1A section of the file.

(2) Deleted

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281-8.1.11 Drug Evidence Destruction Coordinators (DEDCs) (See MIOG,
Part I, 281-4.1.1(2)(i).)

(1) Each SAC will appoint a DEDC to provide assistance in the coordination of field office procedures for the handling, documentation, and disposition of bulk drug seizures.

(2) Deleted

EFFECTIVE: 10/31/94

281-8.2 Hazardous Chemicals (See MIOG, Part I, 281-4.1.1(3).)

EFFECTIVE: 11/01/93

281-8.2.1 Exposure

While drugs themselves do not represent safety or health hazards unless they are injected, some of the chemicals used to manufacture them are extremely dangerous as flammable, explosive, corrosive or toxic substances. Advice on safety considerations may be obtained from the nearest DEA Laboratory prior to conducting raids where exposure to such substances may occur. Upon request, DEA chemists will be available to participate in closing down a clandestine laboratory and should enter the premises IMMEDIATELY after Special Agents have secured the area. (See MIOG, Part I, 281-4.1.1(3).)

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281-8.2.2 Storage and Destruction (See MIOG, Part I, 281-8.1.5.)

(1) The chemist will categorize chemical substances according to their evidentiary and/or hazardous nature; however, he/she cannot dispose of the substance on site due to safety and environmental contamination considerations.

(2) It is the responsibility of each field division involved in drug investigations to make contingency plans for storage and eventual destruction of hazardous chemicals which may be seized as evidence. Such chemicals may be handled, stored and disposed by Environmental Protection Agency-(EPA) approved contractors. A list of EPA-approved contractors can be obtained from DEA field laboratories. Under no circumstances should hazardous chemicals be stored within FBI office space.

(3) Chemicals deemed hazardous will be seized for forfeiture. Although all such property has theoretical value as evidence, in practice not all of it will be physically introduced as such in court. Through prior coordination with the U.S. Attorney, it can be decided that the Government's interest in preserving these chemicals as evidence does not equate to the danger involved in doing so. In fact, most chemicals routinely deemed "hazardous" are common organic solvents, which are of minimal value as evidence.

(4) Chemicals deemed hazardous will not be retained for evidentiary purposes, but will be disposed of forthwith. The search warrant inventory should distinguish the difference between property handled in this manner and that retained as evidence and/or pending completion of forfeiture proceedings. Furthermore, a separate forfeiture action should be brought against this property as distinguished from property held in custody pending completion of forfeiture proceedings.

(5) Disposal of property prior to completing forfeiture proceedings against it is an approach commonly used by the Government for property which is perishable or which presents an imminent danger to public health. Although the approach allows for prompt disposal, it has the potential disadvantage that, should the subsequent forfeiture proceeding be successfully contested, the Government may be required to recompense the owner to the extent of the property's fair market value.

(6) On occasion, a situation may arise where a chemical deemed hazardous is also a critical item of evidence (e.g., a

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controlled substance dissolved in a hazardous solvent), and the amount is too large to safely submit as a whole to the DEA Laboratory. In this situation, the chemical should be photographed and sampled (samples should be of sufficient size to permit subsequent examination by the defense), and then disposed of.

To assure the admissibility of this evidence, the prosecutor may wish to routinely seek advance court approval to cover any such situation, or he/she may prefer to seek it after-the-fact.

EFFECTIVE: 11/01/93

281-9 CIVIL FORFEITURE

See FORFEITURE AND ABANDONED PROPERTY MANUAL.

EFFECTIVE: 11/01/93

281-10 IMPORTATION INTERDICTION

The U.S. Customs Service (USCS) enforces smuggling violations and is responsible for interdicting and seizing contraband, including narcotics and dangerous drugs. Information disseminated to the USCS will be maintained in a control file in each field office.

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281-11 DIVERSION CONTROL

(1) DEA's Diversion Operations Program is responsible for policing the legitimate pharmaceutical industry that handles the domestic manufacture and distribution of controlled substances. It is the program's function to:

(a) ensure that all individuals and firms dispensing, manufacturing or distributing controlled substances are properly registered under the provisions of the Controlled Substances Act of 1970 and

(b) prevent and detect diversion; develop intelligence and by means of its cyclic investigation program, ensure that all registrants comply with the security and recordkeeping provisions of the Act.

(2) Any inquiries or information relative to this program should be referred to the local DEA representative.

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281-12 ALLEGATIONS CONCERNING FOREIGN GOVERNMENTS AND
FOREIGN GOVERNMENT OFFICIALS' INVOLVEMENT IN DRUG
SMUGGLING INTO THE UNITED STATES

Allegations concerning foreign governments and foreign government officials' involvement in drug smuggling into the United States will receive priority attention.

(1) Agents will vigorously pursue any allegations of this nature utilizing all available investigative techniques, including consensual monitoring and polygraph, to substantiate these allegations.

(2) If allegations of this nature are made to other law enforcement or Government agencies, determine to what extent these allegations have been substantiated.

(3) After obtaining all available information concerning these allegations, immediately submit a summary teletype to FBIHQ.

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Attention: OC/Drug Branch, captioned "Drug Matters - Allegations Concerning Foreign Government or Foreign Government Officials Involved in Drug Smuggling into the United States" - identify country against which allegation has been made.

(4) FBIHQ will advise if further investigation is warranted.

(5) In order to obtain all available information concerning these matters, SACs should ensure that appropriate liaison is established with other Government agencies within their division so that they will be aware of FBI interest in this matter.

(6) FBIHQ will coordinate closely with DEA and other Government agencies to ensure coordination in these investigations.

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281-13 DISSEMINATION OF THIRD PARTY INFORMATION

(1) Drug investigations MAY involve joint investigations between FBI, DEA, and other Federal, state, and local law enforcement agencies. As a result, valuable and sensitive intelligence information is constantly being passed from one agency to another. It is imperative that the sanctity of third party intelligence information be maintained; therefore, before the FBI or DEA can disseminate information received from one agency to another agency, it must have the approval of the originating agency.

(2) Relative to dissemination by DEA or FBI of information which impacts on the other agency's jurisdiction, such information should be disseminated at the local level on a timely basis. If, however, some legitimate reason exists why the information cannot or should not be disseminated to the interested agency at the local level, the information will be expeditiously referred for review by DEA to DEA HQ or by the FBI to FBIHQ, whichever is appropriate.

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281-14 CORRUPTION OF PUBLIC AND LAW ENFORCEMENT OFFICIALS
IN DRUG INVESTIGATIONS

(1) Although not a distinct classification, allegations of official or police corruption should be thoroughly pursued in relation to the particular drug trafficking organization under investigation. The identification of official or police corruption, which is directly facilitating drug trafficking activity, will become an integral part of all drug investigations.

(2) When allegations of official or police corruption arise in relation to drug trafficking activity, such cases will be addressed under the appropriate 281 or 245 classification describing the type of drug trafficking group which the corrupt activity supports.

EFFECTIVE: 11/01/93

281-15 FINANCIAL FLOW INVESTIGATIONS (SEE MIOG, PART I,
SECTION 272, MONEY LAUNDERING.)

EFFECTIVE: 11/01/93

281-16 CROSS-DESIGNATION OF NON-TITLE 21 FEDERAL AGENTS

(1) Pursuant to Title 21, USC, Sections 873(b) and 965, the AG has the authority to request another Federal agency to assist in the enforcement of the Controlled Substances Act, Title 21, USC, Sections 801-904, and the Controlled Substances Import and Export Act, Title 21, USC, Sections 951-971. The process of requesting assistance is commonly referred to as cross-designation.

(2) The AG has delegated authority to cross-designate to the Director of the FBI and the Administrator of DEA, pursuant to the provisions of Title 28, CFR, Sections 0.85(a) and 0.100, respectively. In turn, the Director has delegated his authority to

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cross-designate Federal Agents to the Deputy Assistant Director of the CID.

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281-16.1 General Policies

(1) The FBI cross-designation program envisions authorizing non-Title 21 law enforcement officers of the GS 1811 series to actively conduct drug investigations under the supervision of an FBI Supervisory Special Agent (SSA).

(2) Although the cross-designation process will most commonly be requested in the course of an OCDETF investigation, the OCDETF designation is not required for cross-designation, nor is the fact that non-Title 21 Federal Agents are participating in an OCDETF investigation sufficient cause to request cross-designation.

(3) Cross-designation is required only when non-Title 21 Federal Agents are to actively engage in investigations of Title 21 violations.

(4) Cross-designation is not required in a multiagency investigation in which the FBI is investigating violations of Title 21 and other participating Federal agencies are contemporaneously investigating violations within their own statutory jurisdiction.

(5) The FBI will cross-designate non-Title 21 Federal Agents only in Title 21 investigations in which the FBI is able to provide direct supervision of the cross-designee by an FBI SSA.

(6) Cross-designation will be provided by the FBI in Title 21 investigations in which the FBI is the lead or sponsoring agency, irrespective of DEA's participation.

(7) Although the authority to cross-designate rests with the DAD, CID, a request to cross-designate must originate from the SAC of the FBI field office requiring the assistance of non-Title 21 Federal Agents. Direct requests to cross-designate from other agency SACs, their respective headquarters or departments will not be granted.

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281-16.2 Scope of Cross-Designation Authority

(1) Cross-designated Federal Agents (designees) are authorized to assist the FBI in the investigation of Title 21 violations only. The statute does not authorize a grant of general FBI jurisdiction to designees.

(2) The scope of authority conferred by cross-designation is further limited by the FBI requirement of direct supervision of the designees.

(3) The authority of an FBI SSA to supervise case management and to control case direction as they relate to a designee's investigative actions is coextensive with that SSA's authority to supervise and direct the investigative actions of FBI Agents during the course of the same investigation.

(4) Sound management requires the FBI SSA to provide the necessary training and orientation to FBI policies, procedures, rules and regulations relating to Title 21 investigations to all designees and to take into account the total experience and training of those designees in determining the nature and extent of supervision required.

(5) Under no circumstances is unilateral action by a designee Agent in a Title 21 investigation contemplated or authorized by the cross-designation process.

(6) The rights and duties of a designated Agent to his/her parent agency are not affected by cross-designation. Pay and promotion status remain the exclusive responsibility of the designee's parent agency.

(7) Designees will abide by the investigative rules and regulations of the FBI when assisting the FBI in a Title 21 investigation.

(8) Cross-designation will be granted on a case-specific basis only. The FBI's cross-designation program does not contemplate standing multiagency task forces that require blanket cross-

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designations for an indeterminate period.

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281-16.3 Civil Liability

(1) The FBI and DEA share primary jurisdiction to conduct Federal drug investigations. The U.S. Forest Service has the authority to investigate violations of Section 841 of Title 21 relating to controlled substances manufactured, distributed or dispensed on National Forest System lands. The USCS has customs enforcement jurisdiction under Title 19. Such authority does not, however, constitute drug enforcement authority generally.

(2) The grant of generally exclusive jurisdiction for drug enforcement to both the FBI and DEA, coupled with the explicit authority under Title 21 to request the assistance of other agencies in conducting drug enforcement investigations, impliedly requires the FBI to exercise the same type of supervision, guidance, training, oversight and managerial controls over the designee as is provided to FBI personnel.

(3) The Federal Tort Claims Act (FTCA), as amended, provides, in pertinent part, that the exclusive remedy for common-law torts committed within the scope of a Federal employee's employment is an action against the United States under the FTCA. Therefore, FBI personnel involved in the act or process of cross-designation would not be sued in their individual capacities for the alleged common-law torts committed by designees acting within the scope of their employment.

(4) It is unlikely that Government liability will result under the FTCA for FBI policy decisions relating to the conduct of drug investigations, to include the decision to request and cross-designate non-Title 21 Federal Agents. The issue of supervision of these designees, however, may directly impact on the potential Government liability that may arise under the FTCA.

(5) Negligent or grossly negligent supervision or non-supervision of designees increases the Government's exposure to liability under the FTCA.

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(6) Constitutionally based civil actions filed against Federal officers (Bivens actions), grounded in simple negligence or negligent supervision, will not succeed. The general rule appears to be that for liability to be imposed under Bivens or under Title 42, USC, Section 1983, a supervisory official must exhibit conduct amounting to deliberate indifference or tacit authorization to commit constitutional violations about which he/she knew or should have known. The process of cross-designation does not create independent drug enforcement jurisdiction for those requested to assist the FBI in drug enforcement investigations such that drug investigations could be conducted without FBI supervision and training.

(7) FBI personnel involved in the cross-designation and supervision process should be sufficiently protected from civil liability, provided that appropriate orientation and supervision have been afforded. The designated Federal Agent should be advised that he/she may nevertheless be liable in Bivens-type actions based on activities which violate a person's constitutional rights.

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281-16.4 Training of Designees

(1) Given the concept of cross-designation, it is not feasible or practical for the FBI to develop a curriculum and institute formal, FBI Academy-based instruction for designees. Field training on an ad hoc basis is the only feasible method of training. The nature of the assistance requested and the duties to be performed by the designee will be a principal factor in determining the extent and nature of training required. Each designated Agent must be evaluated individually. In addition to the tasking of the designated Agent, the following factors are among those to be considered:

- (a) Prior cross-designation;
- (b) Prior cross-training in drug enforcement by either DEA or the FBI;
- (c) Prior drug enforcement training provided by the non-Title 21 parent agency;
- (d) Experience in a joint drug investigation with

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either the FBI or DEA, without cross-designation;

(e) Extent of investigative experience in parent agency non-Title 21 cases.

(2) The above list provides a general, but not inflexible, guide to assessing the training needs of the designee. Historically, non-Title 21 agencies will nominate only their most experienced and accomplished Agents for cross-designation and any particular nominee may have all of the above qualifications. Conversely, nominees with none of the above experience or training should not be considered for cross-designation unless mitigating circumstances exist, such as substantial police drug enforcement experience prior to entry on duty with the parent Federal agency.

(3) At a minimum, all nominees should be provided the opportunity to review the MIOG, Part I, Sections 245 and 281, and to review the "Activities and Standards of Conduct" section of the MAOP, Part I, Section 1. Thereafter, SAC memoranda that update relevant sections of the MIOG and MAOP should be provided to the cross-designees for their review.

(4) It is expected that designees who have been cross-designated or cross-trained in the recent past will require no more formal training than the minimum suggested. Thereafter, such designees should be assigned to work closely with an FBI Special Agent (SA) experienced in drug investigations. Other options for designees with less drug investigative experience or training may include a block of instruction on Title 21 provided by the field office's Principal Legal Advisor or assignment to work directly with an FBI SA for an appropriate orientation period.

(5) In addition to the above, SACs should certify that the designee has been afforded firearms training in accordance with the parent agency's standards and ensure that the designee has qualified under those standards within the past year.

(6) The range and extent of training necessary and provided will be made on an individual basis and will support the certification of the FBI SAC that the designee meets the FBI's standards for cross-designation in the requesting teletype. Documentation to support the SAC's certification will be maintained by the field office in an appropriate control file.

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EFFECTIVE: 11/01/93

281-16.5 Duration of Cross-Designation Authority

(1) Cross-designation authority runs from the date of approval by the DAD, CID, not from the date of notice to the designee. Each SAC will ensure that appropriate controls are established to track the duration of a designee's authority. FBIHQ will NOT notify field offices of authority expiration.

(2) Cross-designation authority will terminate or expire under any of the following conditions:

(a) The reassignment, transfer, retirement or other administrative action by the parent agency that affects the availability of the designees. FBIHQ must be advised.

(b) Automatically, at the end of the requested period for cross-designation. Any reasonable period of one year or less may be requested; however, a minimum of six months is suggested.

(c) Automatically, after one year from the last day of the month in which cross-designation was authorized by FBIHQ. The one-year maximum applies to all cross-designations.

(d) The investigation under which authorization was granted has been concluded and the assistance of the designee(s) is no longer required. FBIHQ must be notified in those instances in which investigative activity ceases prior to the expiration of the requested period of cross-designation.

(e) The SAC terminates for "cause," defined as: (1) any action by the parent agency that affects the designation suitability of the Agent; (2) any investigative action by the designated Agent that is unilateral, uncoordinated, or unsupervised relating to the Title 21 phase of the investigation; or (3) any other objectionable designation. FBIHQ must be advised.

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281-16.6 Notice of Termination

In all instances, the designee must be formally advised that his/her cross-designation authority has expired or has been terminated.

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281-16.7 Procedures to Request Cross-Designation (See MIOG, Part I, 281-16.8(2).)

(1) The decision to request the cross-designation of a non-Title 21 Federal Agent rests with the FBI SAC of the appropriate field office. The authority to cross-designate rests with the Director of the FBI, and has been delegated to the DAD, CID, to improve the efficiency of the process. Formal notice to the designee upon authorization of cross-designation is required; however, a formal swearing-in ceremony or credential cards are not required.

(2) In order for the FBI SAC to properly assess the suitability of each designee candidate, the parent agency SAC or other appropriate management official will be required to provide a written recommendation for cross-designation, directed to the appropriate FBI SAC, containing the required background information for each designee candidate. The letter of recommendation will be retained in a field office control file specifically designated for cross-designation requests.

(3) The background information on each candidate, listed below, will thereafter be incorporated into a teletype to FBIHQ, Attention: Administrative Unit, Operational Support Section, CID, and will be captioned: CROSS-DESIGNATION PROGRAM. Since many cases later become OCDETF matters, one copy of this teletype must be designated to the OCDETF regional coordinator in the OCDETF core-city field office whether or not the case is initially designated an OCDETF matter. The following information must be provided for each designee candidate:

- (a) Full Name
- (b) Title and GS Series

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- (c) Parent Agency
 - (d) Post of Duty
 - (e) Social Security Account Number
 - (f) Date of Birth
 - (g) EOD Parent Agency
 - (h) FBI Case (file number only) to which designee will be assigned
 - (i) Anticipated duration of cross-designation
 - (j) Identity of the FBI supervisor designated by the SAC for supervision and training of the designee
 - (k) Date of designee's last firearms qualification
 - (l) SAC certification or recitation of FBI's needs and that the designee meets the qualifications for cross-designation.
- (4) For multiple cross-designations requested at the same time in the same case, a single teletype would suffice as long as elements (a) through (l) listed above are covered for each designee.
- (5) Upon receipt of the requesting teletype, FBIHQ will prepare an individual notice memorandum for each designee. The notice memorandum will be completed, except for the designee's signature, by FBIHQ based only on the information provided in the requesting teletype. Field offices should allow at least 15 workdays for processing by FBIHQ during the initial phase of implementation of the Cross-Designation Program.
- (6) An original of the partially completed notice memorandum will be approved by the DAD, CID, and will be forwarded to the requesting field office as an enclosure to the authorization airtel. The authorization airtel will contain the name(s), parent agency and SSAN of all approved designees.
- (7) Upon receipt of the authorizing airtel, the FBI supervisor charged with supervising the designee(s) will present the notice memorandum to the designee for his/her signature and date of notice. The original signed notice memorandum will be retained by the

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field office for filing in the cross-designation control file, matched with the appropriate letter(s) of recommendation from the parent agency official. Three copies of the signed original notice memorandum will be made and disseminated as follows: one copy will be presented to the designee; one copy will be directed to the regional OCDETF coordinator; and one copy will be directed to FBIHQ, Attention: Operational Support Section, CID, under a cover airtel.

(8) It is expected that most cross-designation requests will arise from OCDETF investigations. The OCDETF regional coordinator is being provided with a copy of the requesting teletype and the signed notice memorandum for statistical and compliance purposes only. As opposed to OCDETF deputation requests, approval by the OCDETF regional coordinator or AUSA coordinator is not required in the cross-designation process.

(9) Upon approval of the designee for cross-designation, FBIHQ will direct a letter to the appropriate parent agency or department head notifying that official that the named Agent(s) have been cross-designated by the FBI. The specific FBI case file number and duration of cross-designation authority will be included in this letter. It should be noted that, as a matter of current policy, the Internal Revenue Service (IRS) will not request cross-designation of IRS agents.

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281-16.8 Renewals of Cross Designations

(1) To minimize the administrative requirements, every effort should be made to accurately estimate the duration of cross-designation authority requested in the initial teletype. In those instances in which the designee's assistance is required beyond the requested period, or one year, renewals will be granted only for the same investigation for which authority was originally approved.

(2) To streamline the renewal process, the renewal teletype will be directed to FBIHQ as set out under MIOG, Part I, 281-16.7 with the word "Renewal" included in the caption. The renewal teletype need only include the designee's full name, parent agency, SSAN, date of original cross-designation, file number, and the duration of cross-designation renewal authority required.

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(3) Renewal authority will be granted by a return teletype from FBIHQ to the requesting field office. This renewal teletype will reiterate the name(s) of the designees and will be approved by the DAD, CID. A second notice memorandum will not be enclosed. The designee will be provided with the original of his/her notice memorandum and will be requested to re-sign and redate the memorandum. The original notice memorandum will be matched with the renewal authority teletype from FBIHQ and refiled in the field office control file. Copies of the re-signed notice memorandum will be disseminated as above.

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281-17 CHARACTER - ORGANIZED CRIME/DRUG INVESTIGATIONS
(OC/DI).

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SECTION 282. COLOR OF LAW

282-1 STATUTES

The statutes covered under Section 282 of this manual are as follows:

(1) Title 18, Section 241, USC, Conspiracy Against Rights (See MIOG, Part I, 50-1.5, 56-3.1 & 177-2 (6).)

(2) Title 18, Section 242, USC, Deprivation of Rights Under Color of Law (See MIOG, Part I, 50-1.6, 56-3.2.)

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282-1.1 Title 18, U.S. Code, Section 241 - Conspiracy Against Rights (See MIOG, Part I, 44-1, 44-1.1, 50-1.5, 50-2.4, 56-3.1, 56-3.1, 177-2 (6) & 177-2.6.)

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any inhabitant of any State, Territory or District in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, or because of his/her having exercised the same. It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured. Among the rights secured from interference by private individuals over the years by the courts which have described them as basic substantive rights of Federal citizenship are the following:

- (1) The rights enumerated under the Homestead laws
- (2) The right to vote in a Federal election
- (3) The right of a voter in Federal elections to have his/her ballot fairly counted

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(4) The right to be free from violence while in Federal custody

(5) The right to assemble and petition the Federal Government

(6) The right to testify in Federal courts

(7) The right to inform a Federal officer of a violation of Federal law

(8) The right to furnish military supplies to the Federal Government for defense purposes

(9) The right to enforce a decree of a Federal court by contempt proceedings

(10) The right of a Federal officer not to be interfered with in the performance of his/her duties (See MIOG, Part I, 89-2.2.)

(11) The right to be free to perform a duty imposed by the Federal Constitution

(12) The right to travel freely from one state to another

In addition to the above rights, the United States Supreme Court in UNITED STATES V. PRICE, 383 US 787 (1966), held that where state participation was involved in the conspiracy, Section 241 covers those rights secured under the 14th Amendment to the U.S. Constitution, which include protection against state action depriving any person of life, liberty, and property without due process of law.

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282-1.2 Title 18, U.S. Code, Section 242 - Deprivation of Rights
Under Color of Law (See MIOG, Part I, 282-3.1 (6).)

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any inhabitant those rights, privileges, or immunities secured or protected by the Constitution and laws of the United States. This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully subject or cause to be subjected any inhabitant to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such inhabitant being an alien or by reason of his/her color or his/her race. These are two separate violations within this statute. The Department of Justice (DOJ) has advised that case law defines inhabitant as a person whose mere transitory or momentary presence within the United States, its possessions or territories, either legally or illegally, is sufficient to bring that person within the jurisdiction of this section. Acts under "color of any law" include acts not only done by Federal, state, or local officials within the bounds or limits of their lawful authority (law, statute, ordinance, regulation, or custom), but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, any officials, such as Mayor, Councilman, Judge, nursing home proprietor, security guard, etc. and who are bound by laws, statutes, ordinances, or customs. A private citizen, who is a willful participant with Federal, state or local officials in the commission of "color of law" violations, may also be charged with violation of Title 18, USC, Section 242.

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282-2 TIME UTILIZATION RECORDKEEPING (TURK) DESIGNATION IN 282
MATTERS (SEE MAOP, PART II, 3-1.1 & 3-1.2.)

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282-2.1 282A Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, involving the use of force and/or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282A matter.

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282-2.2 282B Investigations

Any allegation of a violation of Title 18, USC, Sections 241 or 242, which does NOT involve the use of force or violence by INDIVIDUAL(S) ACTING UNDER COLOR OF LAW is to be handled as a 282B matter.

EFFECTIVE: 01/31/94

282-3 HANDLING OF COMPLAINTS - INITIATION OF INVESTIGATIONS

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282-3.1 Initiation of Investigation

The following circumstances represent examples of situations in which an investigation should be initiated:

(1) Upon receipt of an allegation from a complainant or victim not known to be unreliable.

(2) Upon receipt of either a written or verbal request from the Civil Rights Division (CRD), Department of Justice (DOJ), the latter of which will also be documented by CRD, DOJ and transmitted to the field by airtel from FBIHQ. If a field office strongly disagrees with the requirements of the DOJ investigative request(s) and taskings, the field office should contact the DOJ attorney generating the investigative request and attempt to resolve any issues. If the field office cannot resolve the matter with DOJ, contact the CRU. The United States Attorney (USA) does not have the authority to advise a field office to discontinue investigation specifically requested by the DOJ. Any questions regarding the deletion of any portion of a DOJ request must be promptly referred and discussed with the DOJ. If no resolution is obtained, contact the CRU.

(3) Upon receipt of a request from a USA. If the field office believes the USA's request is not warranted and cannot resolve this with the USA, promptly advise the Civil Rights Unit (CRU), Criminal Investigative Division (CID), FBIHQ. (See MIOG, Part I, 282-4.2 (7).)

(4) Upon receipt of specific information appearing in the legitimate news media reporting apparent violation(s) of color of law (Title 18, USC, Section 242) or conspiracy against rights (Title 18, USC, Section 241).

(5) From any source not known to be unreliable.

(6) Federal Law Enforcement Officials

The FBI has investigative jurisdiction for any color of law complaint against any FEDERAL, state, or local law enforcement officials. Upon receipt of a complaint involving allegations against personnel of a Federal law enforcement agency, obtain initial facts of the complaint from complainant, victim or other original source and advise FBIHQ. Conduct no further investigation unless specifically instructed to do so by FBIHQ. The complaint will then be discussed by FBIHQ with the CRD, DOJ, for a determination as to whether the

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Department will request a criminal civil rights investigation by the FBI or whether the CRD, DOJ, will decline criminal prosecution in favor of an administrative inquiry. You may assume that complaints against Federal law enforcement officials which have been made directly to CRD, DOJ, and which resulted in CRD, DOJ requesting FBI investigation, transmitted to the field by airtel, have been previously coordinated between CRU, FBIHQ, and CRD, DOJ, and do not require further consultation with CRU to initiate an investigation. Color of Law allegations against any Federal law enforcement agency official should be promptly brought to the attention of the CRU, FBIHQ. "Color of Law" can also apply to nonlaw enforcement officials who have lawful authority due to their position, such as mayor, councilman, tax collector, proprietor of a nursing home, security guard, etc., and who are likewise bound by laws, statutes, ordinances, regulations or customs. Law enforcement personnel are therefore only a few of the "officials" who act under color of law. "Color of Law," is further defined in Section 282-1.2.

(7) Upon receipt of a complaint involving color of law allegations against FBI PERSONNEL, the following procedures are to be followed: (See MIOG, Part I, 263-8.)

(a) Advise the CRU, CID, and the Office of Professional Responsibility (OPR), Inspection Division (INSD), by telephone, followed by appropriate communications so that FBIHQ may furnish appropriate guidance. The CRU will coordinate with OPR and other FBIHQ components and advise the SAC concerning the proper handling of the matter;

(b) If a civil rights complaint arises during an administrative inquiry, the pertinent administrative inquiry relating only to the civil rights allegation must stop in order to resolve any criminal violations. That portion of the administrative inquiry may not resume until authorized by FBIHQ.

(c) OPR, INSD, and CRU, CID, will coordinate the presentation of the facts of the allegations to OPR, DOJ, and the CRD, DOJ, to determine if a criminal investigation is warranted. If no criminal investigation is warranted, the matter will be administratively handled by OPR, INSD. If CRD, DOJ requests a criminal civil rights investigation, the CRU, FBIHQ, will advise the SAC to initiate an investigation which should be reported to FBIHQ pursuant to the existing provisions of this section of the MIOG unless advised to the contrary by FBIHQ.

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282-3.2 Special Circumstances in Which Investigation May Not Be Required

The following circumstances, not all inclusive, represent examples of situations where investigation should not be initiated:

(1) Upon receipt of information involving mass demonstrations, such as riots, marches, parades, student demonstrations, and major confrontations between local law enforcement officers and groups of persons, immediately advise FBIHQ of the details pursuant to instructions set forth in Part I, Section 157 of this manual entitled "Civil Unrest." Furnish the CRU, FBIHQ with a copy of any "Civil Unrest" communications which contain information indicating possible color of law violations.

(2) It is not necessary to initiate a color of law investigation upon receipt of a letter from a Federal or state prison inmate unless specific criteria are met. Pursuant to an agreement between FBIHQ and DOJ, the following specific criteria have been established and must be met prior to initiation of a civil rights investigation based on an inmate letter alleging brutality:

(a) The complainant is the victim or someone with first-hand knowledge of the incident;

(b) The complainant indicates the kind of injuries sustained as well as whether the injuries required medical treatment; and

(c) Names of witnesses provided.

These criteria do not include death cases and only apply to written complaints from inmates of Federal and state prisons. This policy does not apply to prison inmate letters from lesser facilities (i.e., city or county jails). If all of the above criteria are not satisfied, a letter should be directed to the writer requesting the necessary information. If the writer does not respond or the information furnished still does not meet the criteria, conduct no further investigation. The letter(s) should be indexed and filed in the field office 282-0 file, or a control file.

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(3) Each field office is also authorized to place letters in an appropriate zero or control file if the writer is obviously mentally deranged and makes no legitimate or specific color of law complaint. Letters which contain a questionable or borderline complaint should continue to be resolved by sending a letter to the writer requesting additional specific information. If the information thereafter does not indicate a possible color of law violation, there is no need to forward the letter(s) to FBIHQ; however, they must be properly indexed and filed in the field office. Letters which allege a pattern of violations, or which are submitted by a legitimate civil rights organization but do not contain sufficient predicate information, should be referred to FBIHQ.

EFFECTIVE: 01/31/94

282-4 INVESTIGATIVE PROCEDURE - 282A MATTERS - FORCE AND/OR VIOLENCE

EFFECTIVE: 01/31/94

282-4.1 Initial Investigation (See MAOP, Part II, 2-5.2.4.)

(1) Interview the victim(s) and/or complainant(s) for full details of allegation(s). As a part of each interview, secure the identity of subject(s) and witness(s) to the incident. Have victim execute a medical release form (FD-465) if injuries sustained were treated by a physician or if victim required hospitalization. Advise victim that information furnished may be used in court of law. See Section 282-8.6(9) regarding the need for signed statements. (See MIOG, Part I, 282-6 (1).)

(2) Observe, describe, and photograph, in color, any complaint-related injuries visible on body(ies) of victim(s) at the time of interview. If victim's wounds are bandaged, determine whether the bandages can be removed so that the victim's wounds can be photographed. If the bandages can safely be removed, photograph the

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unbandaged wounds. If the bandages cannot be safely removed, photograph the bandaged wounds. Photographs made available from other sources may be used if the authenticity of the photographs can be established and used for court purposes.

(3) At the outset of any investigation involving a possible "Color of Law" violation (Title 18, USC, Section 242), the responsible head or appropriate official of the agency or institution involved is to be notified of the initiation of the investigation. This includes all local, state and Federal agencies and institutions. DUE TO POSSIBLE RETALIATION AGAINST THE COMPLAINANT, DO NOT FURNISH THE IDENTITY OF THE COMPLAINANT TO THIS OFFICIAL OR ANY PERSON OUTSIDE OF THE FBI OR DOJ.

(4) Obtain copies of all police reports relevant to the incident under investigation with the exception of Internal Affairs reports. Internal Affairs reports are only collected as part of a "Substantial Case" (see Section 282-4.2(4)) and are not collected as part of the "Initial Investigation." A cover FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of records are readable. Determine what criminal and judicial action has been taken or is contemplated by authorities against victim(s) and subject(s). Conduct appropriate criminal record checks for each victim and subject. An inquiry with the state computerized law enforcement system is normally sufficient. In death cases, obtain a copy of the report of the autopsy if conducted, or coroner's report. Do not delay completion of investigation awaiting these reports but show in your report what steps have been taken to obtain relevant records.

(5) Obtain copies of any medical records relating to treatment received by each victim for injuries allegedly sustained at the hands of subject(s). Most hospitals and doctors will require a release (FD-465) signed by victim or a subpoena before making records available. If a subpoena is necessary, obtain the name of the person for whom a SUBPOENA DUCES TECUM should be issued. An FD-302 should be prepared identifying the source of these records and date obtained. Ensure copies of these records are readable.

(6) Conduct field office indices search and set out information regarding other civil rights allegation(s) made against each subject. Also, conduct an indices search regarding victim(s) and summarize information contained in field office file(s).

At this point, a 282A case may be closed when, in the opinion of the SAC, the investigation establishes that the totality of the

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circumstances indicates that the case is not of a serious or substantial nature and therefore does not warrant further investigation. Minimal injury to the alleged victim, by itself, is not sufficient justification to terminate any investigation. Furnish results of investigation to FBIHQ for transmittal to the DOJ. (See Section 282-5 for reporting guidelines.)

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282-4.2 Additional Investigation Required - Substantial Case

If the case is determined to be serious and substantial in nature, conduct the following additional investigation:

(1) Interview all or a sufficient number of witnesses to fully develop the facts of the case. Identity of witnesses may be obtained from subject(s), victim(s), or police reports. Obtain and document the names and addresses of all witnesses who were not interviewed during the investigation. As a part of the interview with each witness, obtain full name, address, telephone number, employment, race, sex, date of birth and social security number. Advise witnesses that information furnished may be used in a court of law.

(2) Identify and interview all physicians and other medical and paramedical personnel who treated victim(s) for injuries allegedly sustained at the hands of subject(s), including the ambulance attendants who transported victim(s) to the hospital, the hospital admission clerks, orderlies, and the nurses involved in the treatment of victim(s). In the interviews with the doctors and other medical personnel, also determine the following information: the severity of victim's injuries, whether victim's injuries could have been caused the way he/she or subject(s) claim, whether victim appeared intoxicated (especially if subject(s) claim the victim was), and whether victim was belligerent and/or unruly (especially if subject(s) claims he/she was). In death cases, interview the pathologist or medical examiner who performed the autopsy.

(3) Interview each subject for full details of the incident. Obtain a complete physical description and background for each subject during interview or from police records. (See Section 282-8.6(9) regarding the need for signed statements.) Be aware of GARRITY considerations as noted in Section 282-4.2(4), below.

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(4) Contact appropriate officials at the subject officer's agency to obtain pertinent records, i.e., Internal Affairs Report, personnel file, etc., and any other complaint(s) against subject. It should be noted that the Supreme Court has held that a statement given by a public employee under an express threat of dismissal for failure to answer cannot constitutionally be used against the employee in a subsequent criminal proceeding (GARRITY v. NEW JERSEY, 385 US 493 (1967)). Furthermore, subsequent case law has held that the fruits of these statements are likewise not admissible. Accordingly, do not review any of these compelled subject statements but instead forward them to FBIHQ in a sealed envelope marked "potential GARRITY statements enclosed." Upon receipt, CRU, FBIHQ will transmit the GARRITY material to the DOJ where the report will be reviewed and any compelled subject statements will be removed before the entire investigative report is reviewed by the case Attorney at CRD, DOJ. The cover communication should also note that an Internal Affairs Report is enclosed and it may contain GARRITY statements. If the subject officer consents to make such statements available, that fact should be recorded on an FD-302 and it should also be noted in the administrative section of the report. (See MIOG, Part I, 282-4.1 (4).)

(5) Where there are conflicts as to the facts, attempt to resolve same. For example, if there is a conflict in the sequence of events, inspect and copy records, such as police logs, tape-recorded radio transmissions, or hospital admission records, that would help resolve the conflict.

(6) Describe the scene of the incident; where appropriate, supplement description with photographs or a diagram.

(7) After completion of the investigation, advise the USA of the results and ask USA if further investigation is warranted. Regardless of the USA's answer, submit report of investigation completed. If USA requests further investigation, conduct whatever investigation USA requests as long as such requests are reasonable and pertinent to the case. If a problem arises with a request of this nature, handle pursuant to instructions set forth in 282-3.1(3) of this manual. The results of this investigation should be furnished in an investigative report supplementing the initial report. When the USA states that the investigation is adequate, request the USA to furnish an opinion as to the prosecutive merit of the matter. Do not delay the submission of any report pending a prosecutive opinion by the USA. USA's prosecutive opinion can be furnished in a supplementary report.

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282-5 REPORTING GUIDELINES - 282A MATTERS (SEE MIOG, PART I,
282-4.1.)

EFFECTIVE: 01/31/94

282-5.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth under Section 282-8.1.

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282-5.2 Format of 282A Investigative Report

(1) All investigative activity is to be reported utilizing the FD-263 cover page, the FD-204 synopsis page, FD-302s and investigative inserts. Do not use an LHM unless specifically authorized by FBIHQ. All investigative activity is to be completed and reported within 21 workdays of receipt of complaint. (See Section 282-8.2 and 282-8.4 for exceptions to this rule.) These cases are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agent(s). (See MIOG, Part I, 282-7.2 (1).)

(2) Reports are to be organized in a logical progression. A table of contents should be utilized in order to assist review of the investigation by the case Agent, field supervisor, CRU, FBIHQ, and DOJ Attorneys. Civil Rights reports should be organized as follows:

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(See MIOG, Part I, 282-7.2 (1).)

(a) Complete the FD-263 and set forth the identity of the responsible head or appropriate official of the agency or institution involved who was advised of the initiation of a Civil Rights investigation under the Administrative Section of the form. Ensure date of this notification is included. See Section 282-5.2 (2) (m) below, for instructions regarding CRD, DOJ notification to this individual of its decision to close the case after its review of the FBI report(s).

(b) Complete the FD-204 including a DETAILED synopsis which succinctly sets forth the investigative content of the report. Do not use phrases such as "interview set forth" or "details set forth" in the synopsis.

(c) Predication paragraph is to follow as the first item under "Details" of the report. The predication must contain a brief statement as to the basis for the case being opened.

(d) Interview(s) of victim(s) is to be set forth on an FD-302(s).

(e) Photographs of victim's injuries not submitted to FBIHQ for developing are to be made part of the report and should be handled as enclosures to the report. Observations relative to injuries, photographed or not photographed, are to be recorded on an FD-302.

(f) When necessary, a diagram of the scene where the incident occurred should be made a part of the report.

(g) Interview(s) of witness(s) is to be set forth on FD-302(s) or investigative insert(s). See also Section 282-8.6(9).

(h) Interview(s) of subject(s) is to be set forth on FD-302(s). See also Section 282-8.6(9).

(i) Police records of less than ten (10) pages are to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of police records in an FD-302 if they are not readable.

(j) Medical records of less than ten (10) pages are

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to be included as pages in the report. Records of ten (10) or more pages are to be made enclosures to the report. An FD-302 is to be prepared containing the source of these records and date obtained. Ensure these records are readable. Summarize contents of medical records in an FD-302 if they are not readable.

(k) Interviews of medical personnel are to be set forth on FD-302s.

(l) Prior arrest records of subject(s) and/or victim(s) are to be made pages in the report and/or set forth on an investigative insert. The source(s) of these records and date obtained are to be set forth on an investigative insert.

(m) Results of the field office file review; USA's opinion; SAC's authority to close the case; and list of subject(s) and victim(s) addresses are to be set forth on investigative insert(s). With respect to the notification list, which normally appears at the end of the report, the CRD, DOJ has established a procedure by which subject law enforcement agency officers, victims and complainants are notified by letter of the DOJ's decision to close Civil Rights cases after reviewing FBI reports. To assist the DOJ in notifying subject(s), victim(s), and complainant(s), a list of the subject(s), victim(s), and complainant(s), along with addresses where they may be notified is to be clearly set forth on the last page of a report. If during the course of the investigation, the head or other appropriate official of the subject officer's department or agency SPECIFICALLY requests to be notified, that specific request should be noted in the details of your report on the last page. Clearly state that this official SPECIFICALLY desires departmental notification. Without this statement the DOJ will not advise the official. Set forth the name and title of the appropriate official and the address to which notification may be sent. (See (a) above.)

(n) The original and two (2) copies of each report and three copies of report enclosures are to be submitted to FBIHQ. One copy of report and enclosures is to be forwarded to the USA.

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282-6 INVESTIGATIVE PROCEDURE - 282B MATTERS - NONBRUTALITY

(1) Interview complainant and/or victim(s) if readily available. Secure same information as set forth under 282-4.1(1) during interview.

(2) Where appropriate to round out the investigation, check police records, office indices, court records, institution records and any other records pertinent to the case.

(3) Examples of nonbrutality allegations are as follows:

(a) Unlawful arrest or detention

(b) Unlawful search or seizure

(c) Police harassment or abuse of power

(d) Failure of any public official to take official action. This involves cases in which a public official, who is a witness to, or cognizant of, a deprivation of civil rights of an individual, such as an assault upon that individual, fails to take appropriate action to protect that individual's person or rights.

(e) Deprivation of civil rights in connection with trial, conviction, or sentence. Includes allegations of improper extradition procedures.

(f) Deprivations relating to or growing out of treatment of incarcerated persons or concerning administration of prisons or jails.

(g) Alleged unlawful deprivation of property by purported action of any public agency. Involves cases relative to imposition of zoning restrictions on property, exercise of eminent domain without due process of law, and like situations.

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| 282-7 REPORTING OF INVESTIGATION - 282B MATTERS

EFFECTIVE: 01/31/94

| 282-7.1 Submission of FD-610

The FD-610 is to be submitted to FBIHQ within five workdays of the receipt of the complaint pursuant to instructions set forth in Section 282-8.1.

EFFECTIVE: 01/31/94

| 282-7.2 Format of 282B Investigative Report

(1) Any matter which contains extensive investigation is to be reported in the same manner as a 282A case. Instructions relating to 282A case reports are set forth under 282-5.2(1) and (2).

(2) All other investigation may be reported by LHM. The LHM must contain a comprehensive description of the investigation conducted. Any FD-302s, investigative inserts, and records of less than ten (10) pages should be appropriately designated as pages in the LHM. Large numbers (over 10 pages) of reproduced records are to be forwarded as enclosures to the LHM.

(3) When an LHM is submitted in a 282B matter, furnish FBIHQ with the original and two (2) copies of the LHM. Furnish local USA with one (1) copy of the LHM.

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282-8 ADMINISTRATIVE INSTRUCTIONS

EFFECTIVE: 01/31/94

282-8.1 Submission of the FD-610 (See MIOG, Part I, 44-7.1, 44-8.1, 50-4, 173-1, 177-6.1, 177-8.1, 189-4, 204-4, 214-2, 282-5.1, 282-7.1, & 282-8.6 (6).)

(1) The purpose of the FD-610 is to promptly provide FBIHQ with a complete set of pertinent facts for each "color of law" case investigated by the FBI. "Purpose" and "Instructions" are also listed on the reverse side of the FD-610. Data contained on the form is entered by the CRU, FBIHQ, directly into the Civil Rights Information System (CRIS) which assists in a more effective, efficient, and economical management of the Civil Rights program by FBIHQ and the field. Field divisions may request that FBIHQ provide information/analysis based on data from the FD-610.

(2) INITIAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. Upon receipt of a complaint or request for investigation which requires the initiation of a color of law case, the initial FD-610 must be submitted within five (5) workdays. Every effort should be made to complete items (1-9) on the FD-610. If the complaint is received by an auxiliary office, the auxiliary office should obtain sufficient facts regarding the matter; advise the potential office of origin in an expeditious manner (preferably by facsimile) about the complaint; and file the complaint in the 282-0 file. The office of origin should then submit the FD-610 to FBIHQ within five (5) workdays of receipt of the complaint from the auxiliary office.

(3) SUPPLEMENTAL SUBMISSION. Instructions are set forth on the reverse of the FD-610. A supplemental FD-610 should be submitted whenever the field office determines the additional information should be submitted to FBIHQ. This may include information which was not known previously, was previously omitted, or was previously incorrectly reported. When submitting a supplemental FD-610, provide data only for those items requiring a change from the initial FD-610.

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(4) The following sets forth specific instructions regarding completion of items 1 through 9 of the FD-610:

Item 1 - Title: Provide the full case title to include name of subject(s), victim(s), and complainant. Fully identify the rank/position of the subject and agency including city and state. If the victim is deceased, write "deceased" behind victim's name and place in parentheses. Thereafter, the classification and office of origin should be listed. The following is an example:

CAPTAIN JOHN DOE,
HUNT POLICE DEPARTMENT,
HUNT, NEW JERSEY;
MICHAEL SMITH (DECEASED) - VICTIM;
MARY SMITH - COMPLAINANT;
COLOR OF LAW
OO: NEWARK

Ensure any previous communications are referenced.

Item 2 - Office of Origin File Number: Self-explanatory.

Item 3 - Auxiliary Office File Number: Obsolete.

Item 4 - Initial/Supplemental Submission:
Self-explanatory.

Item 5 - Matter Type: Check appropriate block(s) to best describe the type of case initiated. The type of matter is self-explanatory and has been set forth in such a manner as to best describe separate civil rights subprogram priorities. This format is also used to describe civil rights cases submitted to the CRD, DOJ.

Item 6 - Date of Incident: Self-explanatory. If the date of the alleged violation is unknown or ongoing (harassment, failure to take action, etc.), use the latest incident date.

Item 7 - Date of Complaint: This is the date that the complaint is received in the field office/resident agency.

Item 8 - Synopsis of Case: The synopsis should provide a concise summary of the allegation(s). Do not use such phrases as "See LHM" or "Details set forth."

Item 9 - Significant Case: Instructions are on the reverse of the FD-610. If the case is of such a nature that FBIHQ

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should expedite handling of this case, the "yes" block should be checked. Significant cases are those receiving extensive media attention, involving a prominent individual or extensive media attention, or involving an FBI employee as the subject or victim. Significant cases are also those wherein FBI investigation has determined the allegations to be serious and substantial thus warranting a full investigation. When prosecution becomes imminent, FBIHQ should be advised promptly and a supplemental FD-610 would be submitted designating the case "significant if not so designated on the initial FD-610." If there is a question as to whether a case is "significant," contact the CRU, FBIHQ, to resolve the issue.

A "Remarks/Administrative" Section is provided at the bottom of the FD-610 and should be utilized to advise FBIHQ of unusual or administrative matters.

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282-8.2 Deadlines (See MIOG, Part I, 282-5.2 (1).)

Investigations are to be given prompt, preferred, and continuous attention and handled in an impartial manner by mature Agents. Deadlines have been established primarily to limit the time period that an allegation against a police officer remains unresolved. INVESTIGATIONS ARE NOT TO BE CONDUCTED WITH LOCAL LAW ENFORCEMENT OFFICERS AND ARE TO BE INDEPENDENTLY CONDUCTED BY THE FBI. Investigations of all color of law cases are to be reported to FBIHQ in accordance with the following deadlines:

(1) FD-610 - Upon receipt of a complaint, the receiving office must submit the FD-610 within five (5) workdays. In those instances where FBIHQ is advised by telephone or teletype of a new case, the FD-610 still must be submitted within five (5) workdays of the receipt of the complaint.

(2) 282A - Substantial Case - Upon receipt of a complaint that initiates a 282A case, and the investigation has determined the matter is substantial, complete investigation and mail the report to FBIHQ within twenty-one (21) workdays. If the investigation cannot be completed and a "Closing" report mailed on or before the expiration of 21 workdays, then mail an initial "Pending" report within the 21-workday deadline and follow with subsequent reports within 21

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workdays of the prior report. For further instructions regarding complex investigations, see the last paragraph in this section.

(3) 282A - Nonsubstantial Case - Upon receipt of a complaint that initiates a 282A case and investigation determined the matter was NOT substantial, submit completed investigation by report mailed within 21 workdays.

(4) Upon receipt of a complaint that initiates a 282B case, submit completed investigation by report/LHM mailed within 21 workdays.

Initial deadlines are established utilizing the date of receipt of the complaint which should be noted on the FD-610. Deadlines for subsequent reports are based on the date of the previous communication. Under normal conditions, 282B matters should be completely resolved and reported within 21 workdays. In 282A cases, every effort should be made to complete the investigation and submit the report within 21 workdays. If the investigation is not completed within that time frame, a pending report should be submitted and contain at a minimum, the complainant and/or the victim interview(s), and the police incident report. In a case in which investigation will be extensive and cannot be completed and mailed within 21 workdays, the field office should advise FBIHQ of the investigative steps to be pursued and, UACB, the date the results will be furnished to FBIHQ. (See (2).)

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282-8.3 Procedures when Local, State, or Federal Agencies are Investigating Same Incident

From time to time questions have arisen concerning the procedures to be followed by the FBI in conducting investigations of alleged violations of criminal Civil Rights statutes when local or state agencies are simultaneously conducting an investigation of the same incident. Departmental policy in such circumstances is as follows:

(1) Upon receipt of information by the FBI sufficient to justify initiation of a color of law investigation, an investigation should be conducted regardless of the fact that a local or state

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investigation of the same incident is also being conducted. If, during the course of the FBI's investigation, state or local criminal charges arising out of the incident are filed against the subject(s), the FBI's investigation should be suspended and the USA and FBIHQ should be notified of the nature of the criminal charges and the likely timetable for prosecution of such charges. In all other situations, the investigation should continue to completion.

(2) Exceptions to this procedure may be necessary on infrequent occasions. Authority should be sought from FBIHQ, on such occasions before suspending the investigation in the absence of filing of state or local criminal charges against the subject(s). FBIHQ, CRU will consult with DOJ, CRD on such requests.

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282-8.4 Subpoena Matters (See MIOG, Part I, 282-5.2 (1).)

Upon receipt of a subpoena for Agent's testimony, production of material or disclosure of information pertaining to a pending or closed color of law investigation, the following procedures must be followed:

(1) Promptly notify the USA for the district in which the demand arose. The USA is under obligation to immediately contact the Deputy Assistant Attorney General, CRD, DOJ, for referral to the appropriate Section Chief for review of the information for which disclosure is sought.

(2) Notify FBIHQ, Attention: CRU, CID, by appropriate communication (i.e., teletype, facsimile, telephone, or airtel) of receipt of the subpoena, the results of your contact with the USA and all pertinent factors you believe appropriate for consideration in reaching a resolution to the demand. The above information will be forwarded to the CRD, DOJ for its final determination of action to be taken in response to the demand. CRD, DOJ will generally notify the concerned USA directly of its decision concerning the subpoena and advise FBIHQ of its instructions to the USA. FBIHQ will then advise the concerned field office of this information. The original and one copy of the airtel with three copies of the subpoena must be provided to FBIHQ.

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(3) In all instances, keep FBIHQ advised of all developments concerning each subpoena.

(4) No release of information should be made without FBIHQ and DOJ authority.

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282-8.5 Assignment of Special Agents to Color of Law Investigations

Situations may dictate that certain FBI Agents not be assigned color of law cases. Those situations are as follows:

(1) Special Agents who are former police officers, when the subject(s) is a law enforcement officer; (See (5).)

(2) Special Agents who have close relatives in the agency involved; (See (5).)

(3) Special Agents who have close working or personal relationships with the officers who are the subjects of a color of law investigation; (See (5).)

(4) Special Agents who have a close working relationship with the specific law enforcement agency involved and a question of propriety may be involved; and, (See (5).)

(5) Special Agents assigned to a Resident Agency who fall into categories (1), (2), (3), or (4). Resident Agents may conduct the initial interview of the victim(s) and/or complainant(s) and obtain records for any 282 case in their territory. Unless unusual circumstances exist, Resident Agents may be assigned to 282B cases involving agencies in their territory.

(6) Special Agents falling into the above categories can be assigned to investigate all other matters within the Civil Rights Program. They can also assist in noninterview assignments in police misconduct cases by conducting police record checks, obtaining medical records, and/or court documents.

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282-8.6 Miscellaneous

(1) Promptly advise FBIHQ of any imminent prosecution, criticism, controversy, or extensive publicity arising in connection with color of law cases.

(2) If victim or complainant indicated he/she is in fear for his/her life or safety, ensure that the appropriate local authorities are advised without revealing the source of the complaint. This notification should be documented in the field office file and should be provided to FBIHQ only when a civil rights case is initiated.

(3) If victim(s) or witnesses are confined to hospitals or institutions and cannot be interviewed except in the presence of those charged with their custody, interviews should not be conducted and FBIHQ should be advised of such information.

(4) A subject, victim, or other witness may refuse to be interviewed except in the presence of his/her attorney. The SAC may authorize an interview of this nature if, in the opinion of the SAC, such an interview is necessary.

(5) Obtain FBIHQ authority prior to contacting a judge or a judicial officer in a civil or criminal action to determine disposition of a matter which may be pending before the court. Advise FBIHQ precisely why such information cannot be obtained from sources other than the court or judicial officer and furnish recommendation of SAC as to whether or not a particular judge should be interviewed. This information will be conveyed to the DOJ for review. Upon receipt of DOJ approval, the field division will be notified by FBIHQ. This course of action is necessary inasmuch as the CRD, DOJ, prosecutes the majority of color of law cases and has supervisory responsibility for almost all such prosecutions. Therefore, the DOJ must be made aware of such contacts.

(6) In certain urgent situations the auxiliary office receiving a color of law complaint should notify FBIHQ and the office of origin by teletype and/or telephone prior to submission of the FD-610. The auxiliary office should forward the victim/complainant interview, FD-302s, inserts, or other pertinent information to the

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office of origin within ten (10) workdays. If the investigation in the auxiliary office is extensive and such that the information cannot be furnished to the office of origin in ten workdays, mail the details of the original complaint (victim/complainant interview) within 10 workdays and mail the remainder within 21 workdays. In those instances where the office of origin has a color of law case initiated by an auxiliary office, the office of origin should still mail an FD-610 to FBIHQ within 5 (five) workdays of receipt of the complaint (See MIOG, Section 282-8.1 above) and a complete investigative report to FBIHQ within 21 workdays.

(7) No arrests are to be made or complaints filed without prior CRU, FBIHQ notification.

(8) When exhibits, including photographs, are obtained, furnish one copy to the USA and three copies to FBIHQ. Field offices should keep one copy of the exhibit for their files, including photograph negatives.

(9) Interviews of victims, subjects, and witnesses should be reduced to a signed statement only in the following instances: (See MIOG, Part I, 282-4.1 (1), 282-4.2 (3), 282-5.2 (2) (g) & (h).)

(a) Upon specific instructions from FBIHQ.

(b) Upon specific request of USA.

(c) Upon specific request of DOJ.

(d) When deemed appropriate by the Special Agent during the course of the interview.

Interviews should be conducted even though a person declines to furnish a signed statement. If the interviewee is requested to provide a signed statement and declines, note this in the FD-302.

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282-9 PENALTIES

(1) Title 18, USC, Section 241 - maximum of \$10,000 and/or imprisoned not more than 10 years. If death results, any term of years or for life. (See MIOG, Part I, 44-10, 50-1.5 (3), 50-2.4.)

(2) Title 18, USC, Section 242 - maximum of \$1,000 and/or imprisoned not more than 1 year; if bodily injury results, fined under this title and/or imprisoned not more than 10 years or both. If death results, imprisonment for any term of years or for life. (See MIOG, Part I, 50-1.6, 50-2.5.)

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282-10 CHARACTER - COLOR OF LAW

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SECTION 283. FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

283-1 FOREIGN COUNTERINTELLIGENCE INVESTIGATIONS

Information concerning the 283 classification is set forth in a separate FBI manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM MANUAL (NFIPM).

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|SECTION 284. ECONOMIC COUNTERINTELLIGENCE

| 284-1 ECONOMIC COUNTERINTELLIGENCE

| Information concerning the 284 classification is set forth
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
| MANUAL (NFIPM).|

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|SECTION 285. ACTS OF ECONOMIC ESPIONAGE

| 285-1 ACTS OF ECONOMIC ESPIONAGE

| Information concerning the 285 classification is set forth
| in a separate manual, the NATIONAL FOREIGN INTELLIGENCE PROGRAM
| MANUAL (NFIPM).|

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| SECTION 291. ANIMAL ENTERPRISE PROTECTION (AEP)

| 291-1 STATUTES

| Title 18, USC, Section 43 (AEP Act of 1992).

EFFECTIVE: 01/10/97

| 291-2 JURISDICTION

| In accordance with 28, Code of Federal Regulations,
Section 0.85(a), the FBI shall investigate all alleged or suspected
criminal violations of the AEP Act of 1992.

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| 291-3 VIOLATIONS

| Title 18, USC, Section 43 (AEP Act of 1992) includes the
following:

| Section 43. Animal enterprise terrorism

| "(a) OFFENSE. - Whoever -

| "(1) travels in interstate or foreign commerce, or
uses or causes to be used the mail or any facility in interstate or
foreign commerce, for the purpose of causing physical disruption to
the functioning of an animal enterprise; and

| "(2) intentionally causes physical disruption to the
functioning of an animal enterprise by intentionally stealing,
damaging, or causing the loss of, any property (including animals or
records) used by the animal enterprise, and thereby causes economic
damage exceeding \$10,000 to that enterprise, or conspires to do so;
shall be fined under this title or imprisoned not more than one year,

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or both.

"(b) AGGRAVATED OFFENSE.

"(1) SERIOUS BODILY INJURY. - Whoever in the course of a violation of subsection (a) causes serious bodily injury to another individual shall be fined under this title or imprisoned not more than 10 years, or both.

"(2) DEATH. - Whoever in the course of a violation of subsection (a) causes the death of an individual shall be fined under this title and imprisoned for life or for any term of years.

"(c) RESTITUTION. - An order of restitution under section 3663 of this title with respect to a violation of this section may also include restitution -

"(1) for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of the offense; and

"(2) the loss of food production or farm income reasonably attributable to the offense.

"(d) DEFINITIONS. - As used in this section -

"(1) the term 'animal enterprise' - means

"(A) a commercial or academic enterprise that uses animals for food or fiber production, agriculture, research, or testing;

"(B) a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

"(C) any fair or similar event intended to advance agricultural arts and sciences;

"(2) the term 'physical disruption' does not include any lawful disruption that results from lawful public, governmental, or animal enterprise employee reaction to the disclosure of information about an animal enterprise;

"(3) the term 'economic damage' means the replacement costs of lost or damaged property or records, the costs of repeating an interrupted or invalidated experiment, or the loss of profits; and

"(4) the term 'serious bodily injury' has the meaning given that term in section 1365 of this title."

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291-4 INVESTIGATIVE/PROSECUTIVE/REPORTING PROCEDURES

In handling complaints involving the AEP Act, immediately present facts to the United States Attorney (USA) for a prosecutive opinion. If the USA will not consider federal prosecution, conduct no investigation, advise complainant, and confirm conversation to USA and complainant in writing. Where appropriate, refer matter to law enforcement agency having jurisdiction over violation and also furnish this information to USA and complainant. Upon initiation of a 291 investigation, an electronic communication must be immediately forwarded to the Domestic Terrorism Operations Unit (DTOU), FBIHQ, providing the date the investigation was initiated and the predication for its initiation. Upon closing, a communication with summary of the incident should be forwarded to DTOU, FBIHQ. In addition, should the USA render a favorable prosecutive opinion, DTOU, FBIHQ, should be advised.

EFFECTIVE: 01/10/97

291-5 CHARACTER AND CLASSIFICATION

The character for these violations is "Animal Enterprise Protection (AEP)." The classification for AEP cases is 291.

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